RECEIVED
DEC 11 1937
Department of Reclamation

PUBLISHER'S AFFIDAVIT

COUNTY OF GOODING, }
STATE OF IDAHO } ss.

F. F. Swan, being first duly sworn, deposes and says that he is Printer, of The Gooding Leader, a newspaper of general circulation in Gooding County, Idaho, published weekly in the City of Gooding, in said County and State; that said newspaper has been published in said county uninterruptedly and continuously for more than seventy-eight consecutive weeks prior to the first publication of the attached notice; that a notice, of which the annexed is a true copy, was published in the said newspaper for at least five consecutive issues, commencing with the issue dated Nov. 11, 1937 and ending with the issue dated Dec. 9, 1937 in the regular and entire issue of said newspaper and not in any supplement thereof.

F. F. Swan
Affiant's Signature.

Subscribed and sworn to before me this 11th day of Dec., 1937.

O. T. Patterson
Notary Public.
Residing at Gooding, Idaho.

Notice For Publication
NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10 a. m. on the 11th day of December, 1937, at 1220 Idaho Street, Boise, County of Ada, State of Idaho, before M. E. Hughes, Notary Public, proof will be submitted of the application to beneficial use of 526 cubic feet per second of the waters of Clear Lake and its feeders in accordance with the terms and conditions of Permit No. 10415 heretofore issued by the State Engineer of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Idaho Power Company, Boise, Idaho.

The use to which said water has been applied is electrical power generation.

The amount applied to beneficial use is 526 cubic feet per second, or so much thereof as is available.

The place where said water is used (if for irrigation, give full and accurate description of the lands irrigated). Power plant and works located in Lot 7, Section 2, Township 9 South, Range 14 E. B. M., in Gooding County, Idaho

The name of the canal or ditch or other works by which said water is conducted to such place of use is: Idaho Power Company dam, diverting works and steel pipe line.

The right to take water from such works is based upon Permit No. 10415.

The source of supply from which such water is diverted is Clear Lakes and its feeders, a tributary of Snake River.

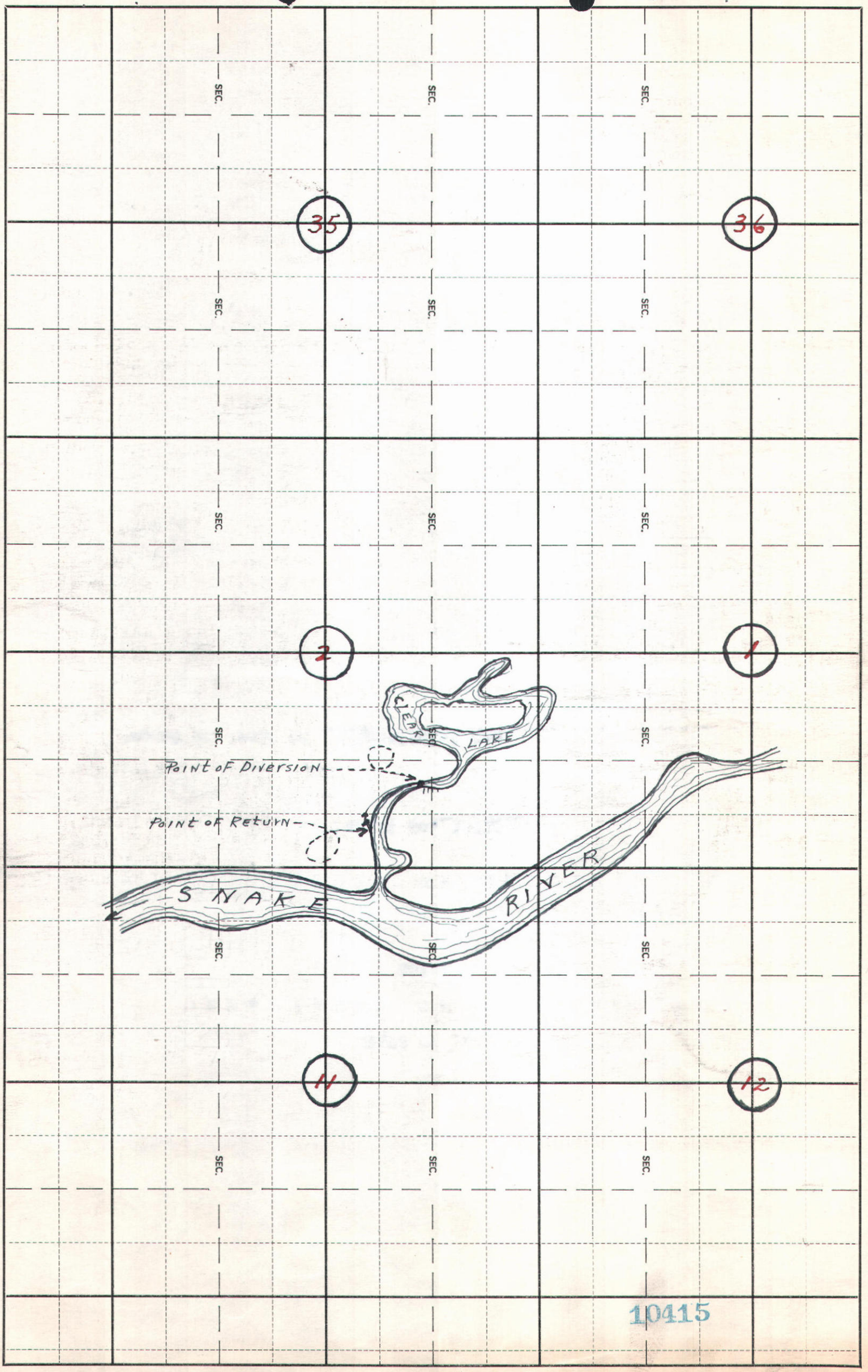
The date of priority which said user is prepared to establish is January 18, 1919.

R. W. FARIS,
50-2 Commissioner of Reclamation

10415

NAME OF APPLICANT _____

FORM No. 0



10415

SCALE: 2 INCHES EQUAL 1 MILE. DRAW PLAN IN INK

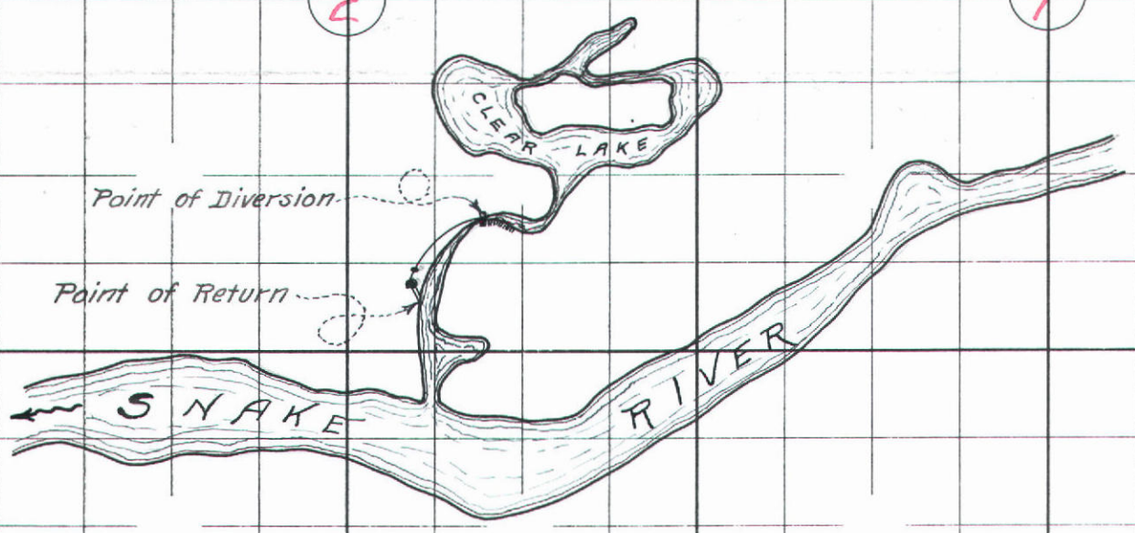
SYMS-YORK CO., BOISE 108688

35

36

2

1



11

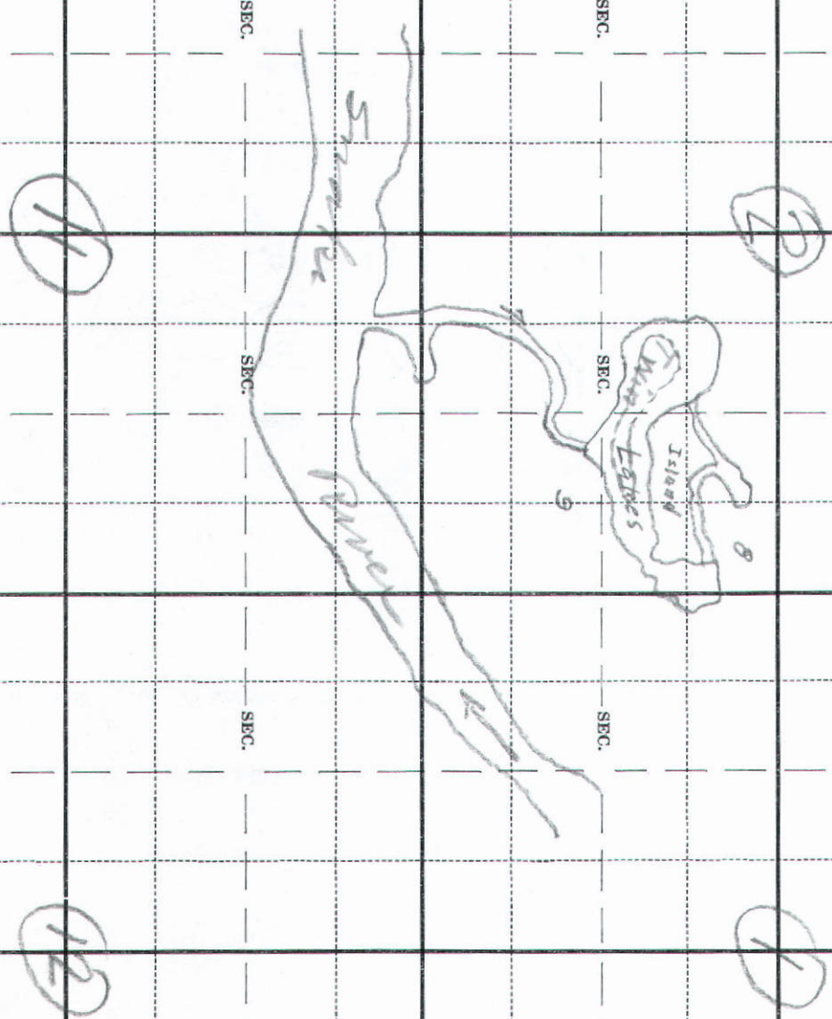
12

10415

SCALE: 2 INCHES EQUALS 1 MILE. DRAW MAP IN INK.

NAME OF APPLICANT Lot 7, Sec 2, T 9S-R14E

FORM NO. 0



10415

SCALE: 2 INCHES EQUAL 1 MILE. DRAW PLAN IN INK

NOTICE FOR PUBLICATION.

Notice is hereby given that at 3 P. M., on the 21st day of May, 1927, at Twin Falls, County of Twin Falls, State of Idaho, before the Clerk of the District Court of Twin Falls County proof will be submitted of the completion of works for the diversion of 750 cubic feet per second of the waters of Clear Lake and its feeders in Gooding County, Idaho, in accordance with the terms and conditions of a certain permit heretofore issued by the then State Engineer of the State of Idaho.

1. The name of the person or corporation holding said permit is Willam C. Hazzard.

2. The postoffice address of such person or principal place of business of such corporation is Buhl, County of Twin Falls, State of Idaho.

3. The number of such Permit is 10,415, and the date set for the completion of such work is May 21, 1927.

4. Said water is to be used for Power purposes.

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is 750 cubic feet per second.

6. The place of intended use is N. 81°00′ E. 576 feet from the Southeast corner of the SW¼ of Section 2, Twp. 9 S., R. 14 E., B. M.

GEO. N. CARTER,
Commissioner of Reclamaion. 16-20

PUBLISHER'S AFFIDAVIT

COUNTY OF GOODING, } ss.
STATE OF IDAHO }

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F. F. Swan
Affiant's Signature.

Subscribed and sworn to before me this 30th day of April 1927

P. T. Lutphen
Notary Public.
Residing at Gooding, Idaho.

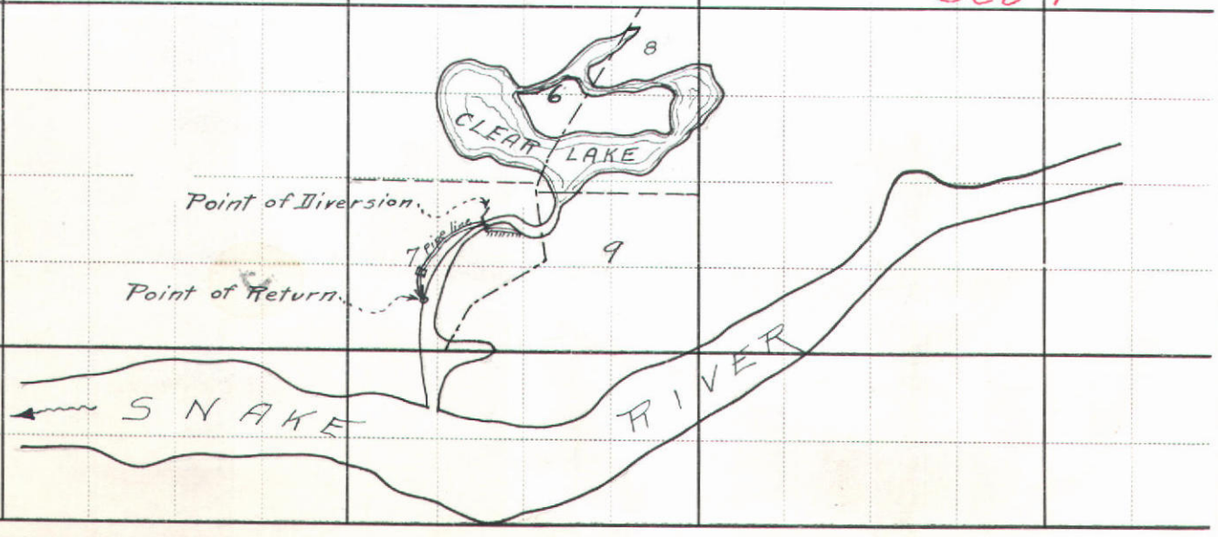
10415

Sec 35

Sec 36

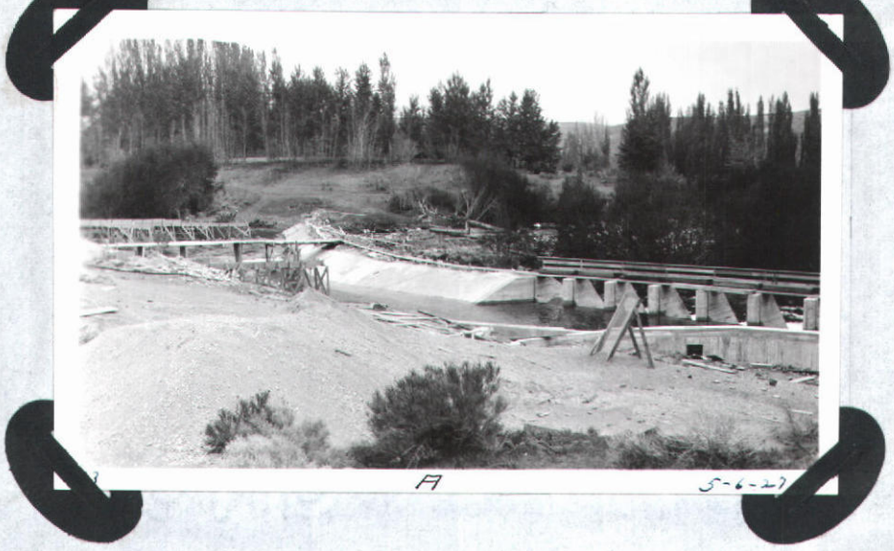
Sec 2

Sec 1



SCALE: 2 INCHES EQUALS 1 MILE. DRAW MAP IN INK.

10415



General view of Forebay looking upstream



View of Pipe location toward outlet



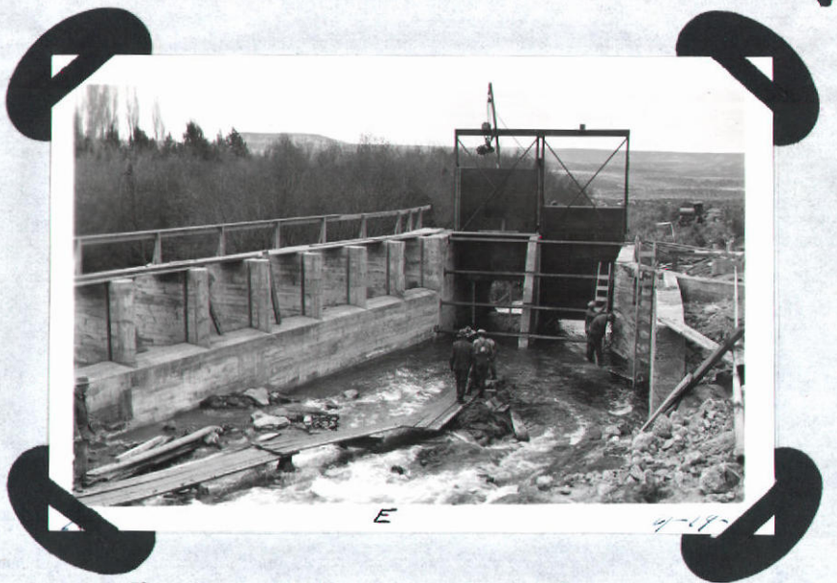
Showing upper portion of pipe and heading

10415

10415



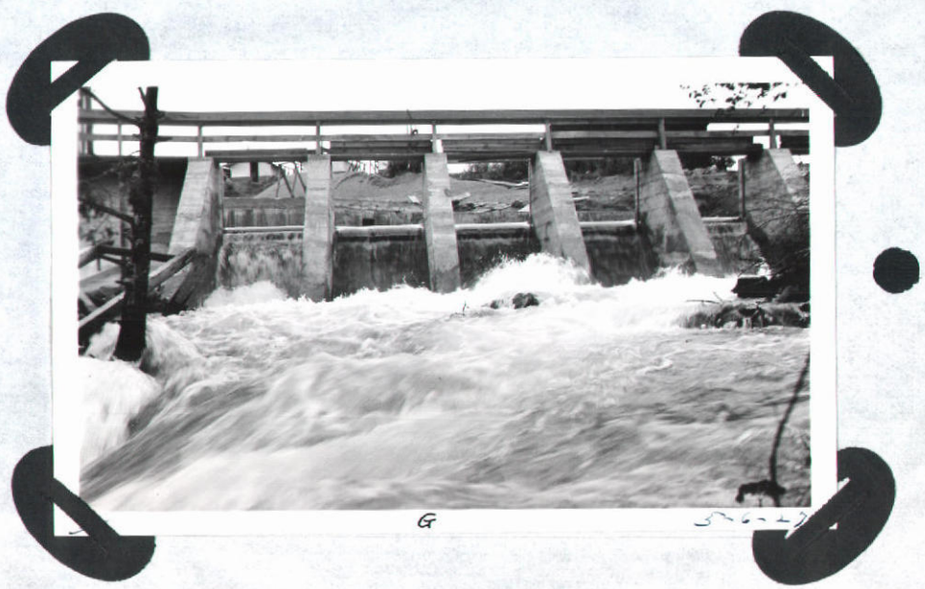
Downstream view of spillway and gates



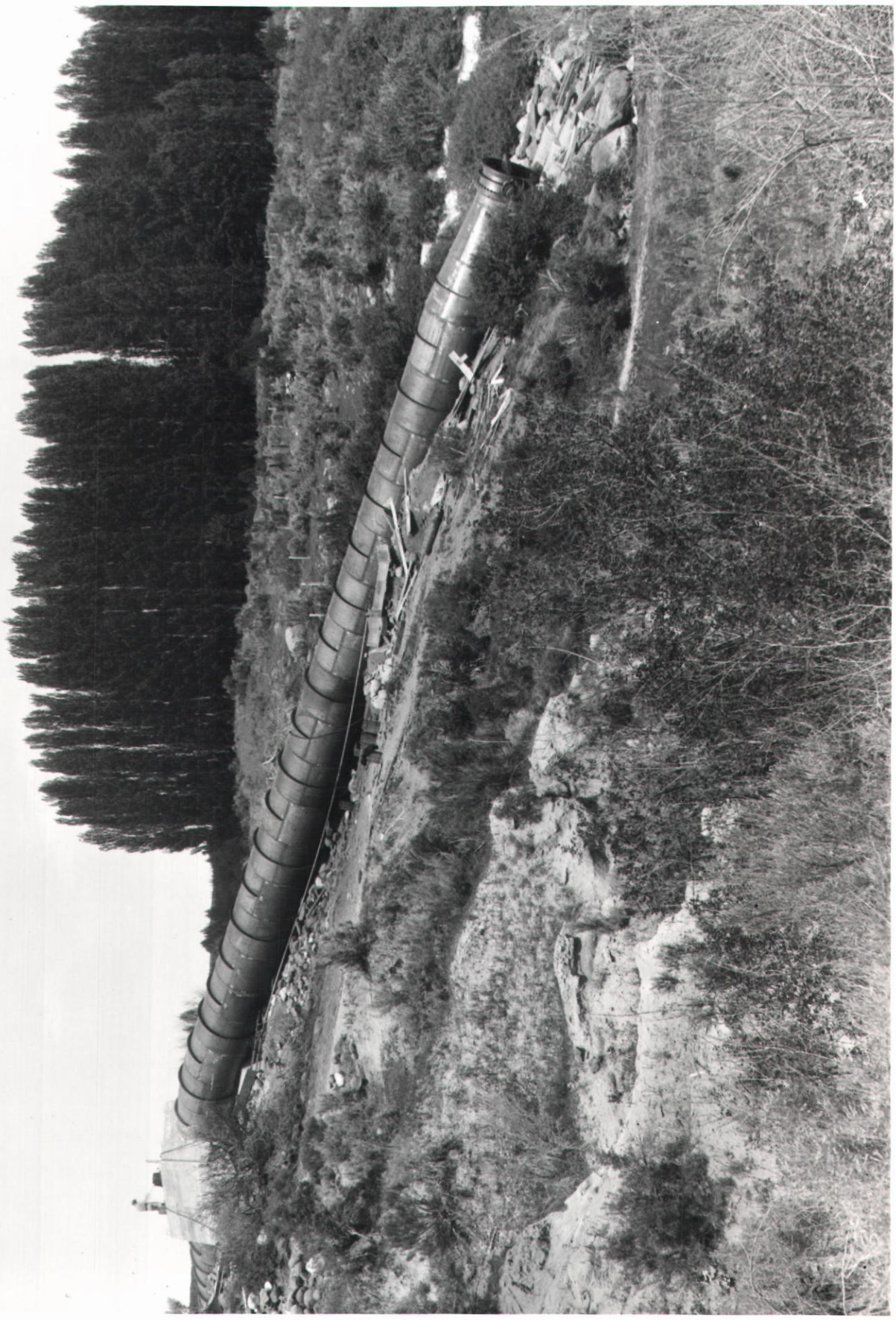
Showing construction of Forebay & gates
Trash racks not in place



...iew showing connection between spill-
way structure and rock-fill dam



Downstream view of spillway in operation



View showing lower section of completed pipe and base
for surge tank

10415

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

(Signature or name of addressee.)

(Signature of addressee's agent.)

BOISE IDA. MAY 15 1920 REGISTERED

Date of deli[illegible], 192

Form 3811

10415

Post Office Department

OFFICIAL BUSINESS

REGISTERED ARTICLE

No. 14220

INSURED PARCEL

No. _____

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

CLERK OF DELIVERING OFFICE

BOISE
MAY 15
2 PM
IDAHO
1926

AND DATE OF DELIVERY

Return to Dept Reclamation
(NAME OF SENDER)

Street and Number, or Post Office Box, _____

BOISE,

IDAHO.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

George Arnott

(Signature or name of addressee.)

(Signature of addressee's agent.)

TWIN FALLS, IDAHO
MAY
15
1926
REGISTERED

Date of delivery, _____, *192*

Form 3811

Post Office Department

OFFICIAL BUSINESS

REGISTERED ARTICLE

No. 1-221

INSURED PARCEL

No. _____

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

AND DATE OF DELIVERY

Return to Dept Reclamation

(NAME OF SENDER)

Street and Number, or Post Office Box, _____

10415 BOISE, IDAHO.

NOTICE FOR PUBLICATION

Application for extension of time for completion of works under House Bill 54 Session Laws of 1925.

Notice is hereby given that on the 22nd day of March 1926, at 10 o'clock, a. m., a hearing will be held by the State Commissioner of Reclamation or his deputy at Boise, County of Ada, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for an extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Ida ho No. 10415. The said protests and evidence may be submitted either orally or by affidavits by any persons owning or in possession of a right to the use of any waters of a stream or source of supply affected by the said extension.

1. The number of said permit is 10415.

2. The name and postoffice address of the person or persons or corporation holding the said permit or permits are:

William C. Hazzard, Buhl, Idaho.

3. The amount of water called for by the said permit or permits is 1,000 cubic feet per second from Clear Lake and feeders, which are tributary to Snake River.

4. This notice is to be published at the expense of the applicant or applicants above named. The publisher is hereby authorized to deliver to the said applicant the Proof of Publication upon payment for the said publication.

Department of Reclamation.
W. G. SWENDSEN,
13-14 Commissioner of Reclamation.

PUBLISHER'S AFFIDAVIT

COUNTY OF GOODING, } ss.
STATE OF IDAHO }

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F. F. Swan
Affiant's Signature.

Subscribed and sworn to before me this 20th day of Mar. 1926

F. F. Luttpton
Notary Public.
Residing at Gooding, Idaho.

10415

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
)
Case No. 39576)
)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 36-02018

1997 NOV 25 AM 10:58

DISTRICT COURT-S...
TWIN FALLS CO. IDAHO
FILED

NAME & ADDRESS: IDAHO POWER CO
PO BOX 70
BOISE ID 83707

SOURCE: CLEAR LAKES TRIBUTARY: SNAKE RIVER

QUANTITY: 526.00 CFS

PRIORITY DATE: 01/18/1919

POINT OF DIVERSION: T09S R14E S02 LOT 7 (NESWSE) Within GOODING County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
POWER	01-01 12-31	526.00 CFS

PLACE OF USE: POWER Within GOODING County
T09S R14E S02 Lot 7 (SWSE)

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

This Right has been Decreed in the SRBA.

NO. FILED 4:15
A.M. P.M.
MAR 9 1990
JOHN BASTIDA CLERK
BY Kathleen Martinez
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

* * * * * * * * * * *

IDAHO POWER COMPANY, a corporation, Plaintiff, vs. STATE OF IDAHO, IDAHO DEPARTMENT OF WATER RESOURCES, et al. Defendants.	Case No. 62237 CONSENT JUDGMENT

* * * * * * * * * * *

Upon stipulation of Plaintiff and the State Defendants, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Idaho Power Company's water rights shall be as follows (bracketed names below refer to Company projects):

A. State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan

MICROFILMED
JUN 0 2 2004

Falls) entitle the Company to an unsubordinated right of 3900 c.f.s. average daily flow from April 1 to October 31, and 5600 c.f.s. average daily flow from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion. The Murphy gauging station is located at latitude 43°17'31", Longitude 116°25'12", in NW1/4 NE1/4 SE1/4 of Section 35 in Township 1 South, Range 1 West, Boise Meridian, Ada County Hydrologic Unit 17050103, on right bank 4.2 miles downstream from Swan Falls Power Plant, 7.5 miles NE of Murphy, at river mile 453.5.

B. The Company is also entitled to use the flow of the Snake River at its facilities to the extent of its actual beneficial use, but not to exceed those amounts stated in State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls), but such rights in excess of the amounts stated in 1(A) shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law unless the depletion violates or will violate paragraph 1(A). Company retains it right to contest any appropriation of water in accordance with State law. Company further retains the right to compel State to take reasonable steps to insure the average daily flows established by this Agreement at the Murphy U.S.G.S. gauging station. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein. This paragraph shall constitute a subordination condition.

C. The Company's rights listed in paragraph 1(A) and 1(B) are also subordinate to the uses of those persons dismissed from Ada County Case No. 81375 pursuant to the

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JUN 0 2 2004

contract executed between the State and Company implementing the terms of Idaho Code §§61-539 and 61-540.

D. The Company's rights listed in paragraph 1(A) and 1(B) are also subordinate to those persons who have beneficially used water prior to October 1, 1984, and who have filed an application or claim for said use by June 30, 1985.

E. Company's ability to purchase, lease, own, or otherwise acquire water from sources upstream of its power plants and convey it to and past its power plants below Milner Dam shall not be limited by this agreement. Such flows shall be considered fluctuations resulting from operation of Company facilities.

2. The above-captioned case is hereby dismissed without prejudice as to all remaining defendants other than the State Defendants.

3. The above-captioned case is hereby dismissed with prejudice as against the State defendants as to all claims of plaintiff not resolved by the decisions of the Idaho Supreme Court reported as Idaho Power Company v. State of Idaho, 104 Idaho 570, 661 P.2d 736 and 104 Idaho 575, 661 P.2d 741 (1983) or by the entry of this Judgment.

4. The Swan Falls Agreement, dated October 25, 1984, shall not be merged into nor integrated with this Judgment, but shall remain in full force and effect independent of this Judgment.

5. Each and all parties shall bear their own costs.

DATED this 7th day of March, 1990

DISTRICT JUDGE

MICROFILMED

JUN 0 2 2004

State of Idaho

License and Certificate of Water Right

Water License No. 10415 Amount 526 Sec. Ft.

Water District No. Priority 1-18-1919

THIS IS TO CERTIFY that William C. Hazzard,
of Clear Lake, Gooding County, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated June 29, 19 14; that Permit No. 10415 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 526 second feet, was issued thereunder on June 1, 19 27, showing that said works were completed on the 21st day of May, 19 27; and that on the 11th day of December, 19 37,

THE IDAHO POWER COMPANY, Assignee,
of Boise, State of Idaho, made proof to the satisfaction of the of Idaho, of the right to use the waters of Clear Lake and its feeders, a tributary of Snake River, for the purpose of power, under Use Permit No. 10415 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 7 of Licenses, at page 3903, on the 28th day of December, 19 38;

The right hereby confirmed dates from January 18, 19 19;

The Point of Diversion is located N. 54°8' E. 1685.5 feet from the SE corner of the SW¼ of Sec. 2, T. 9 S., R. 14 E., B. M., in Lot 7 of ~~xxxxxx~~ Sec. 2, Tp. 9 S., R. 14 E., B. M., Gooding County.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 526 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
			At Foot of Devils Wash Board, N. 81°0' E. 576 feet from the SE corner of SW¼ of Section 2, T. 9 S., R. 14 E., B. M.		

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, this 28th day of December, 19 38.

R. W. FARB
Commissioner of Reclamation

(SEAL)

36-2018

10415

No. 15399.

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho

1. Name of applicant: William C. Hazzard,

Postoffice address: Clear Lake County: Gooding State: Idaho.

I. If applicant is a corporation, give
(a) Date and place of incorporation:
(b) The amount of capital stock:
(c) The amount paid in:
(d) Names and addresses of directors:

II. The financial resources of the applicant are: (a) Cash on hand:
(b) Treasury stock: (c) Bonds to be issued:
(d) Other resources:

2. The quantity of water claimed is 1,000 cubic feet per second.

3. Source of water supply: Clear Lake and its feeders.

4. Location of point of diversion: Lot 7, Sec. 2 Twp. 9 S. R. 14 E. B. M. N. 54° 08' E. 1685.5 feet from Southeast corner of Southwest quarter Sec. 2 Twp. 9 S. R. 14 E. B. M.

5. To be used for: Power — County of Gooding.

I. Irrigation and domestic use: (a) Amount of land to be irrigated: acres.
(b) In the following legal subdivisions:

II. Mining, milling, power, manufacturing, transportation or other purposes: Yes.

[a] At what point: Foot of Devils Wash Board N. 81° 00' E. 576 ft. from the Southeast corner of SW¼ Sec. 2, Twp. 9 S. R. 14 E. B. M. ✓

[b] Amount of power to be generated: 7500 H. P. under 85 ft. head
[c] Is water to be returned to any stream? Yes [d] If so, name stream and locate point of return: Snake River, Lot 7, Sec. 2, Twp. 9 S. R. 14 E. B. M. N. 81° 00' E. 576 ft. from the Southeast corner of SW¼ Sec. 2, Twp. 9 S. R. 14 E.B.M.

6. Estimated cost of works: $20,000

7. Description of works for diversion:
I. Kind of works: Dam, open canal, forebay and pipe lines.

II. Dimensions of works:
[a] Height of dam 12 feet, length of dam at top 100 feet, length of dam at bottom 75 feet. Material used in construction: broken stone, earth and concrete.
as shown on survey plat.
[b] Capacity of reservoir Clear Lake acre feet. (c) Size of headgate, width 10 feet, Height 14 feet. (d) Conduit concrete canal width at bottom 21.5 feet, width at water line 25 feet, depth of water 13 feet; diameter of pipe 90 inches; average grade per mile is 163.6 feet. Length of conduit is .23125 miles, and it crosses the following quarter sections: Lot 7, Sec. 2 Twp. 9 S. R. 14 E. B. M.

8. The time required for the completion of the construction of such work is five years.

9. Time required for the complete application of the water to the proposed use is six additional years.

BE IT KNOWN That the undersigned hereby makes application for a permit to appropriate the public waters of the State of Idaho as herein set forth.

William C. Hazzard,
Applicant.

By Agent.

10415

2

Date of first receipt at office of State Engineer 10.25 a.m. June 29, 1914.

Returned to applicant for correction

Corrected application received

APPROVAL OF STATE ENGINEER

The number of this permit is 10415.
Recorded in Book 35 Page 10415 Approved July 8, 1914.
This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions.
Bond in the sum of $2,000.00 to be filed on or before September 6, 1914.
Work to begin on or before and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.
One-fifth of the work above specified to be completed on or before January 8, 1917.
The whole of said work to be completed on or before July 8, 1919.
Beneficial use of water appropriated in accordance herewith, to be made on or before July 8, 1925.

Witness my hand this 8th day of July, 1914.

F. P. King,
State Engineer.

Remarks:

See Deed recorded under permit No. 7056.

OFFICE OF STATE ENGINEER

Boise, Idaho, March 31, 1919.

In the Matter of the Application for Extension of Time for Completion of Works under Permit No. 10415, as Provided in Section 3254, Laws of the State of Idaho, relative to Public Waters, Water Rights and Irrigation.

CERTIFICATE OF APPROVAL

To William C. Hazzard:

This is to certify that, upon the showing heretofore made and filed in the office of the State Engineer of Idaho to the effect that you are prevented from proceeding under the terms and conditions set forth in your above numbered permit because of the pendency of a matter within the jurisdiction of the District Court, of the Fourth Judicial District of the State of Idaho, in and for Gooding County, for the cancelation of the said permit, and over which you have no control, you are hereby relieved from proceeding further under said terms and conditions until such time as the disability hereinbefore mentioned shall have been removed, or until you shall have been notified by this office of the revocation of this certificate.

This certificate will operate to extend the time or times for compliance with the terms and conditions of your permit as originally issued a period of time equal to the period elapsing from the date of this certificate to the date of the removal of the disability hereinbefore mentioned, or until you shall have been notified of the revocation of this certificate: Provided: that you notify this office of the removal of said disability within thirty days after it is removed, and unless such notice is given, no rights will be acquired under this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office at Boise Idaho, this 31st day of March, 1919.

(SEAL)

W. G. SWENDSEN,
State Engineer.

Recorded by
Checked by

June 12, 1924.

Department of Reclamation,
of the State of Idaho and
the State Engineer of said State.

Dear Sirs:

You will note from the records in your office with reference to Permit 7056 and 10415 for the appropriation of waters of Clear Lake and Clear Creek for power purposes, that several extensions and corrected extensions of time were granted for the completion of works from the State Engineer to William C. Hazzard, based upon litigation which interferred with the work in the cases of the Clear Lake Power and Improvement Company vs. John Chriswell, et al and Mary E. Syster vs. William C. Hazzard et al.

In the Judgment and Decree entered by the State Engineer January 4th, 1919, it was ordered "that the extension of time heretofore granted the contestees for the completion of works because of the litigation involved in the case of the Clear Lake Power and Improvement Company, a corporation, plaintiff, vs. John Chriswell et al defendants, in the District Court of the Fourth Judicial District of the State of Idaho in and for Gooding County, is hereby continued until the final termination of said suit by a retrial of the issues in said District Court under an opinion and remittitur of the Supreme Court", and in his certificate of approval dated March 31, 1919, of an application for extension of time for completion of works, based upon the litigation in the case of Mary E. Syster vs. William C. Hazzard et al, the Commissioner of Reclamation required that notice to said Commissioner should be given of the cessation of said disability within thirty days after such disability ceased.

In compliance with such requirement, the holder of said permits, William C. Hazzard, does hereby notify the Department of Reclamation and the said State Engineer that on June 2nd, 1924, an opinion of the Supreme Court of Idaho was filed with the Clerk of said Court, in favor of the defendant and respondent, Hazzard and against plaintiff and appellant, Mary E. Syster, and in which the validity of said Permit 10415 was established in the said Hazzard, and said permit 7056 was declared to have been abandoned upon the application of the work done under permit 7056 to the said permit 10415. The case of the Clear Lake Power and Improvement Company vs. Chriswell et al, was decided prior to the decision in the Syster-Hazzard case, in favor of the plaintiff and appellant and against the defendant and respondent, Chriswell, the said Hazzard being the successor in interest of the successful plaintiff and appellant, the Power and Improvement Company. The decision of the said Syster-Hazzard case in favor of the said Hazzard on June 2nd, 1924, removes all disability, unless the appellant Syster takes further steps in the case, either by moving for a rehearing or by appeal to the Supreme Court of the United States or other action. If further action is taken which will continue to interfere, as above mentioned, the undersigned will make additional application to the Department of Reclamation for further extension.

I would suggest that the Department acknowledge receipt of this communication upon the copy of this letter and return to me as evidence of my compliance with the order to report within thirty days the cessation of the said disability.

Yours respectfully,

William C. Hazzard,
Buhl, Idaho.

Received and filed for record in the Department of Reclamation at Boise, Idaho, at 9:00 A. M. June 17, 1924.

W. G. SWENDSEN,
Commissioner of Reclamation

10415

IN THE MATTER OF THE APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER PERMIT NO. 10415, AS PROVIDED IN SECTION 3254, LAWS OF THE STATE OF IDAHO RELATIVE TO PUBLIC WATERS, WATER RIGHTS AND IRRIGATION.

ORDER GRANTING EXTENSION OF TIME

WHEREAS, Under date of March 31, 1919, certificate of approval was granted under the terms and provisions of Permit 10415, which certificate of approval in fact extended the time during which the terms and provisions of Permit 10415 might be complied with, until such time as the pendency of a matter within the jurisdiction of the District Court of the Fourth Judicial District of the State of Idaho, might be removed; and,

WHEREAS, Under date of June 12, 1924, William C. Hazzard, holder of said Permit 10415, advised the Department of Reclamation that such disability was removed by reason of the fact that the Supreme Court had filed its opinion in this case, thereby removing said pendency of action; and,

WHEREAS, Such notification by permit holder was filed in the Department of Reclamation prior to the period of time allowed for the Supreme Court considering petition for rehearing; and,

WHEREAS, Subsequent to this date and on June 20, 1924, petition for rehearing of the above mentioned case was filed with the said Court; and,

WHEREAS, Under date of July 31, 1924, the Supreme Court ordered respondents to file an answer to said petition, which answer was filed on August 19, 1924;

NOW, THEREFORE, It appearing to the Department of Reclamation that the previous disability is again in effect, IT IS HEREBY ORDERED That the aforesaid notification by permit holder under date of June 12, be voided, set aside and held for naught, and that said disability clause be declared still in effect as of date of June 12, 1924, and it is further ordered that permit holder be not required to file notification of final removal of said disability until such time as remittitur of the Supreme Court finally goes donw to the trial court in said case.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office, at Boise, Idaho, this 11th day of September, 1924.

(SEAL)

W. G. SWENDSEN,
Commissioner of Reclamation

10415

5

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Boise.

In the Matter of Extension of Time Under Permit No. 10415, Under the Provisions of Section 5570, Idaho Compiled Statutes

ORDER GRANTING EXTENSION

WHEREAS, Under date of March 31, 1919, certificate of approval was granted under the terms and provisions of Permit No. 10415, which certificate of approval in fact extended the time during which the terms and provisions of Permit No. 10415 might be complied with, until such time as the pendency of a matter within the jurisdiction of the District Court of the Fourth Judicial District of the State of Idaho might be removed; and,

WHEREAS, Under date of June 12, 1924, William C. Hazzard, the holder of said permit, advised the Department of Reclamation that such disability was removed by reason of the fact that the Supreme Court had filed its opinion in this case, thereby removing said pendency of action; and,

WHEREAS, Such notification by permit holder was filed in the Department of Reclamation prior to the period of time allowed for the Supreme Court considering petition for rehearing; and,

WHEREAS, Subsequent to this date, and on June 20, 1924, a petition for rehearing of the above mentioned case was filed with the said Court; and,

WHEREAS, Under date of July 31, 1924, the Supreme Court ordered respondents to file an answer to said petition, which answer was filed August 19, 1924; and,

WHEREAS, On September 11, 1924, the Commissioner of Reclamation of the State of Idaho issued an order whereby the aforesaid notification of Permit holder was set aside, made void and held for naught, for the reason that the previous disability was again in effect, and that said disability clause be declared still in effect, as of date of June 12, 1924, and that permit holder be not required to file notification of final removal of said disability until such time as remittitur of the Supreme Court finally went down to the trial court in said case; and,

WHEREAS, On March 3, 1926, a copy of such Remittitur was filed in the Department of Reclamation of the State of Idaho, showing that the original Remittitur in such case was filed in the District Court of the County of Gooding, State of Idaho, on November 1, 1924:

NOW, THEREFORE, In view of the contents of the petition of the holder of said permit No. 10415 for extension of time, under the provisions of Section 5570, Idaho Compiled Statutes, and the foregoing outline of conditions, IT IS HEREBY ORDERED that the time within which to complete works under said permit be, and the same is hereby, extended so that the time lost by such delays shall be added to the time given in the original permit for each and every act required, as follows:

That the time for completion of one-fifth of the work under said permit shall be extended to November 21, 1923:

That the time for completion of the works under said permit shall be extended to May 21, 1926:

That the time for beneficial use of water under said permit shall be extended to May 21, 1932.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office, at Boise, Idaho, this 3rd day of March, 1926.

W. G. SWENDSEN
Commissioner of Reclamation

(SEAL)

10415
6

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

IN THE MATTER OF APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER PERMIT NO. 10415 TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO

ORDER GRANTING EXTENSION OF TIME

WHEREAS, Under date of February 19, 1926, William C. Hazzard, the owner of Permit No. 10415 to appropriate the public waters of the State of Idaho, filed an application in the office of the undersigned, Commissioner of Reclamation, requesting an extension of time within which to submit proof of completion of works under the said permit, which said application is requested under the provisions of Chapter 28 of the Session Laws of Idaho for 1925; and

WHEREAS, A public hearing on the said application was convened, all as required by law, and an investigation was made by the undersigned, Commissioner of Reclamation, for the purpose of determining whether or not the said extension should be granted; and

WHEREAS, A consideration of all of the information adduced at the hearing, together with the records of the Department of Reclamation relating to the said permit and such other facts as are available to the undersigned, Commissioner of Reclamation, it appears that a necessity exists for an extension of time under the said permit; that the applicant has acted in good faith, and that an extension of time should, therefore be granted for a period of one year; and

WHEREAS, Proof of completion of works under the said permit is due and must be made on or before May 21, 1926:

NOW, THEREFORE, IT IS HEREBY ORDERED, That the extension of time requested in the said application, be, and the same is hereby granted for one year only, and it is further ordered that a certificate evidencing such extension be issued to the permit holder, extending the time within which permit holder shall be required to make proof of completion of works under the said permit to May 21, 1927.

IT WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office, this 13th day of May, 1926.

W. G. SWENDSEN
Commissioner of Reclamation

(SEAL)

Permit No. 10415

EXTENSION OF TIME FOR COMPLETION OF WORK UNDER HOUSE BILL 54
SESSION LAWS OF 1925

APPROVAL OF COMMISSIONER OF RECLAMATION

WHEREAS, Application for an extension of time for Completion of Works under Permit No. 10415, has been made by the owner thereof, which application was duly advertised in the Gooding Leader of Gooding, Idaho, for a period of two consecutive weeks, and

WHEREAS a hearing in regard to the said Application was then duly held at Reclamation Dept., Boise, Idaho, on March 22, 1926, as specified in the said advertisement above referred to, and;

WHEREAS, after taking into consideration all evidence and testimony introduced at the said hearing it appears that the owner of the said Permit is entitled to a further extension of time within which to complete work,

NOW, THEREFORE, I, W. G. Swendsen, Commissioner of Reclamation of the State of Idaho, by virtue of the authority vested in me under House Bill 54 Session Laws of 1925 No. 10415, to May 21, 1927.

Witness my hand this 13th day of May, 1926.

W. G. SWENDSEN
Commissioner of Reclamation

Proof of Completion of Works made May 21, 1927.
Certificate issued June 1, 1927.

PERMIT NO. 10415.

CERTIFICATE OF COMPLETION OF WORKS.

TO ALL WHOM IT MAY CONCERN:

This is to certify that William C. Hazzard, of Clear Lake, County of Gooding, and State of Idaho, the holder of Permit No. 10415, issued upon Application No. 15399, bearing date of priority of June 29, 1914, authorizing the diversion of 1,000 second feet of the waters of Clear Lake and its feeders, County of Gooding, State of Idaho, for power purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 526 second feet of the waters of Clear Lake and its feeders; that the point of diversion of said waters is in Lot 7, Section 2, Township 9 South, Range 14 East of Boise Meridian; and that the place of intended use of said water is at the foot of Devil's Washboard, N. 81° 00' E. 576 feet from the southeast corner of the SW¼ of Section 2, Township 9 South, Range 14 East of Boise Meridian.

Witness my hand this 1st day of June, A. D. 1927.

GEO. N. CARTER,
Commissioner of Reclamation.

(SEAL)

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

IN THE MATTER OF APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER H. B. 21, SESSION LAWS OF IDAHO, 1927--PERMIT No. 10415.) ORDER DENYING EXTENSION.

WHEREAS, William C. Hazzard, the record holder of Permit No. 10415, made due and regular application for an extension of time within which to complete the works contemplated under said permit, such application for extension being applied for under House Bill 21, Session Laws of Idaho, 1927, and

WHEREAS, a hearing upon said application was set down for May 19, 1927 at ten o'clock a. m., in the office of the Department of Reclamation at Boise, Idaho, and due publication of notice of said hearing was had all as required by law, and

WHEREAS, upon petition of counsel for Mary E. Syster, a protestant against the granting of such extension of time, said hearing was continued until June 1, 1927, and

WHEREAS, On June 1, 1927 a Certificate of Completion of Works was issued under the said permit No. 10415, and no further appearance or showing was made in furtherance of the application for extension of time for completion of works under the said permit.

NOW, THEREFORE, It is hereby ordered that the said application for extension of time as aforesaid mentioned, be and the same hereby is, denied.

WITNESS, The hand and seal of the Commissioner of Reclamation this 27th day of June 1927.

GEO. N. CARTER,
Commissioner of Reclamation.

(SEAL)

10415

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Wm. C. Hazzard and Louise Hazzard, his wife, of Clear Lakes, Gooding County, State of Idaho, do hereby bargain, sell, transfer, set over and assign to Bankers Trust Company, a Utah corporation, authorized to do business and qualified to hold property in Idaho, that certain Application No. 15399 to appropriate the public waters of the State of Idaho for power purposes from Clear Lake and its tributary, in Gooding County, Idaho, made in the office of the State Engineer of Idaho, which said application was approved by the then State Engineer of Idaho on the 8th day of July, 1914, as Permit No. 10415, recorded in Book 35, page 10415, and all right, title and interest of the undersigned in and to such application and permit, and in and to the Certificate of Completion of Diversion Works issued thereon by the Commissioner of Reclamation of the State of Idaho on the 1st day of June, 1927.

All of which application and permit rights were more particularly transferred, assigned and conveyed by the undersigned to said Bankers Trust Company, a Utah corporation, by warranty deed dated June 4, 1927, and which was recorded on June 4, 1927, in the office of the County Recorder of Gooding County, State of Idaho, in Book "8" of Deeds at page 592, and which is hereby referred to and the same and every part thereof specifically made a part hereof.

This assignment is made for the purpose of record in the office of the Commissioner of Reclamation of the State of Idaho, and is in addition to warranty deed hereinbefore referred to.

IN WITNESS WHEREOF, the undersigned, as grantors, have hereunto set their hand this 16th day of July, 1927.

WITNESS:
George Herriott

WILLIAM C. HAZZARD
Louise Hazzard

STATE OF IDAHO,)
)ss.
County of Twin Falls)

On this 16th day of July, in the year 1927, before me, George Herriott, a Notary Public in and for the State of Idaho, personally appeared William C. Hazzard and Louise Hazzard, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the date in this certificate first above written.

GEORGE HERRIOTT
Notary Public for Idaho
Residing at Twin Falls, Idaho.

(SEAL)

My Commission expires Feb. 17, 1928.

Received and filed for record in the Department of Reclamation at Boise, Idaho, at 9.00 A. M. July 25, 1927.

GEO. N. CARTER,
Commissioner of Reclamation.

THIS INDENTURE, Made this 31st day of July, 1933, between George H. Dern, Wilson McCarthy, Louis S. Cates, A. C. Ellis, Jr., Duncan MacVichie, George S. Eccles, J. H. Rayburn, James S. Taylor, H. J. Stoddard and J. F. Dunn, as Statutory Trustees of Bankers Trust Company, a corporation created under the laws of the State of Utah, acting for and on behalf of said corporation and its stockholders or members of said corporation and in accordance with the authority invested in them so to act, the parties of the first part, and First Security Trust Company, a corporation of the State of Utah and qualified to do business in the State of Idaho, the party of the second part;

****

NOW, THEREFORE, the parties of the first part, for and in consideration of the sum of One Hundred Dollars lawful money of the United States of America, and other valuable considerations to them in hand paid by the party of the second part, receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the party of the second part and to its successors and assigns, forever, all the following described real estate situated in the County of Gooding, State of Idaho, to-wit:

****

Also all power rights, headworks, diversion works, canal, forebay, all rights of way appurtenant to or located on said premises and all water filings and franchises, including all water rights in Permit No. 10415, which is of record in the office of the Department of Reclamation of the State of Idaho, except as to reservations hereinafter specified for domestic and irrigation water for William C. Hazzard and Louise Hazzard, his wife.

****

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WITNESS:

/s/ F. C. Lawler	/s/ Louis S. Cates
O. B. Soehner	H. J. Stoddard
P. W. Dayer	A. C. Ellis, Jr.
P. W. Dayer	Geo. H. Dern
P. W. Dayer	James S. Taylor
P. W. Dayer	George S. Eccles
P. W. Dayer	Duncan MacVichie
Fred E. Smith	J. H. Rayburn
P. W. Dayer	Wilson McCarthy
P. W. Dayer	J. F. Dunn

As Directors and as Statutory Trustees of Bankers Trust Company.

****

STATE OF IDAHO)
) ss No.____
County of Gooding)

I hereby certify that this instrument was filed for record at the request of E. C. KIERSTED at 4:30 o'clock P. M., this 14th day of August, 1936, in my office and duly recorded in book 28 - Deeds, at page 181.

BERT BOWLER (Sgd.)
Ex-officio Recorder

By VERA T. WRIGHT (Sgd.)
Deputy

Fees $5.60

Received and filed for record, in part, in the Department of Reclamation at Boise, Idaho, at 11:30 A. M., June 28, 1937.

R. W. FARIS
Commissioner of Reclamation
By J. L.

10415

THIS INDENTURE, Made this 31st day of July, 1933, by and between First Security Trust Company, a corporat organized under the laws of the State of Utah, and qualified to own property and do business in the State of Idaho, said corporation having been formed on or about the 31st day of March, 1931, by the consolidation under t laws of the State of Utah of Bankers Trust Company, a Utah Corporation, and Central Trust Company, a Utah corpor tion, the party of the first part, and Idaho Power Company, a corporation of the State of Maine, and qualified t own property and do business in the State of Idaho, the party of the second part, WITNESSETH:

That the said party of the first part, for and in consideration of the Sum of One Hundred and no/100 ($100.00) Dollars lawful money of the United States of America, and other valuable consideration to it in hand p by the said party of the second part, receipt whereof is hereby acknowledged, has granted, bargained and sold, a by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to i successors and assigns, forever, all the following described real estate situate in the County of Gooding, State Idaho, to-wit:

****

Also all power rights, headworks, diversion works, canal, forebay, all rights of way appurtenant to or lo cated on said premises and all water filings and franchises, including all water rights in Permit No. 10415, whi is of record in the office of the Department of Reclamation of the State of Idaho, except as to reservations her inafter specified for domestic and irrigation water for William C. Hazzard and Louise Hazzard, his wife.

****

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, the reversion and reversions, unto the party of the second part, and to its successors and assigns forever, subject to a lease, dated August 12th, 1927, between Bankers Trust Company, a corporation of Utah, part of the First part, and Otis E. Syster and Mary E. Syster, parties of the second part, which lease was recorded September 17, 1928, in Book 3 of Agreements, at Page 13, in the office of the County Recorder of Gooding County, State of Idaho. And the said party of the first part herein, for itself, its successors and assigns, doth coven with the said party of the second part herein, its successors and assigns, that neither it, the said party of the first part herein, nor Bankers Trust Company, a Utah corporation and one of the predecessors in interest of said party of the first part herein, have made, done, or executed any act or thing, other than the above described lease, whereby the above described property, or any part thereof, is or has been imperiled, charged or encumbere in any manner whatsoever; and the title to the above grant and premises against all persons or governments claim the same from, through or under the said party of the first part herein, or the said Bankers Trust Company, the said party of the first part herein will forever warrant and defend.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal the day and year first above written.

(CORPORATE SEAL)

FIRST SECURITY TRUST COMPANY,

By (Sgd.) Fred. E. Smith.
President

ATTEST:

(Sgd.) W. E. Myrick
Asst. Secretary

STATE OF UTAH)
: SS
COUNTY OF SALT LAKE)

On this 31st day of July, 1933, before me, Clarence E. Raybould, a Notary Public in and for said State of Utah, personally appeared Fred E. Smith, known to me to be the president of the corporation that executed the wi in instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this ce ficate first above written.

(NOTARIAL SEAL)

(Sgd.) Clarence E. Raybould
Notary Public,
Residing at Salt Lake City, Utah
My Commission expires Feby 27 1934

U. S. Documentary
Revenue Stamps attached
in the amount of $198.00
(Cancelled)

11

ENDORSEMENT

65358

State of Idaho)
County of Gooding) ss

I hereby certify that this instrument was filed for record at the request of E. C. Kiersted at 4:35 o'clock P. M., this 14 day of August, 1936 in my office, and duly recorded in book 28 - Deeds, at page 186.

(Sgd.) Bert Bowler
Ex-officio Recorder

By (Sgd.) Vera T. Wright
Deputy

Fees $4.20

Received and filed for record, in part, in the Department of Reclamation at Boise, Idaho, at 11:30 A. M., June 28, 1937.
R. W. FARIS
Commissioner of Reclamation
By J. L.

LICENSE ISSUED FOR 526.650 AF.
V. 7, P. 3903
priority: 1-18-1919

This
Right has been
Decreed in the
SRBA.

Form No. 18

STATE OF IDAHO
ENGINEERING DEPARTMENT
BOISE

F. P. KING,
STATE ENGINEER

Permit No. 10415

BOISE, IDAHO, July 8, 1914.

Mr. William C. Hazzard,
Clear Lake, Idaho.

Dear Sir:

I enclose herewith above numbered permit. BE SURE TO NOTE LIMITATIONS AND CONDITIONS OF SAME as given under approval of State Engineer on the third page.

F. P. KING,
State Engineer.

10415

FORM NO. 150

State of Idaho

ENGINEERING DEPARTMENT

BOISE

A. E. ROBINSON
STATE ENGINEER

Permit No.10415

NOTE

That in order to keep this permit in force a bond in the sum of $2,000.00 must be filed in the office of the State Engineer on or before 6th day of September, 1914, conditioned upon faithfully carrying to completion the works of diversion as specified in said permit and in the application therefor.

A. E. ROBINSON,

State Engineer.

10415

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
IDAHO

IN THE MATTER OF THE APPLICATION)
FOR EXTENSION OF TIME FOR COMPLE-)
TION OF WORKS UNDER PERMIT NO.) TRANSCRIPT OF HEARING
10415, UNDER THE PROVISIONS OF)
HOUSE BILL 54, LAWS OF 1925.)

Pursuant to the application of permit holder, William C. Hazzard, dated February 17, 1926, asking an extension of time within which to offer proof of completion of works under the above stated permit, filed under the provisions of House Bill 54, Session Laws of 1925, a hearing was set at the hour of ten o'clock, this 22d day of March, 1926, and a notice thereof was published at the expense of the permit holder in the Gooding Leader, all as evidenced by the affidavit of publisher on file in the Department of Reclamation of the State of Idaho. (Permit holder indicated his intention to file said proof of publication, it not being available on the date of hearing because of an oversight.)

Pursuant to the said published notice and establishment of date and place of hearing, the hearing came on regularly at the time and place specified, before the undersigned, the following appearances being made for and on behalf of the permit holder: George Herriott, Attorney at Law and Frank L. Stephan, Attorney at Law, appearing for the City of Twin Falls and for the permit holder; and Jess B. Hawley, Attorney at Law, appearing for Mary E. Syster.

The date upon which proof of completion of works is due under Permit No. 10415, is May 21, 1926.

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SCANNED
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Mr. Stephan: We offer in evidence permit holder's original permit No. 10415, marked and considered permit holder's Exhibit "A".

For the purpose of showing the work that has been done by Mr. Hazzard, we offer in evidence six photographs, which we request be marked permit holder's Exhibits "B", "C", "D", "E", "F", and "G".

Mr. Hawley: Are these pictures of the work done since the Syster case was tried?

Mr. Stephan: No, there has not been any work done since the Syster case was tried in Gooding County. These pictures show the conditions of the work done prior to January 8, 1917, and no work has been done since that date.

Commissioner: It is admitted by permit holder that the Exhibits b to G, inclusive, show work performed prior to January 8, 1917, and that no work has been done on the site since the said date.

There being no objection to the introduction of the said exhibits, the same are received.

Mr. Stephan: We offer in evidence a contract of date, October 8, 1919, made by Mr. Hazzard and wife with the Farmers Mutual Power Company, which we request be marked Exhibit "H".

Commissioner: It is admitted by permit holder that the said Exhibit "H" is not now effective and also admitted that the contract expired within a month after November 1, 1924.

There being no objection on the part of protestant, the contract of Mr. Hazzard is admitted.

Mr. Stephan: We offer in evidence extension of contract, marked Exhibit "I", which extension is of date, October, 1921.

Commissioner: There being no objection, the Exhibit is admitted.

Mr. Stephan: We offer further in evidence at this time

an agreement extending the time in which to perform the provisions of said contract, dated March 20, 1922.

Commissioner: There being no objection, Exhibit"J", is received.

Mr. Stephan: We now offer in evidence, as Exhibit "K", subscription list on the part of the subscribers for water in the Farmers Mutual Power Company. The exhibit is a copy of the original subscription list. I believe it contains certificates on the part of three or four or more persons with regard to financial standing or ability to pay on the part of subscribers at the time of the subscriptions.

Commissioner: There being no objection, Exhibit "K", is received.

Mr. Stephan: Now, at this time, we would like to ask that the Commissioner consider Permits No. 13362 and No. 13363, being considered and admitted as Exhibits "L" and "M".

Commissioner: There being no objection, said permits are accepted.

Mr. Stephan: We are offering at this time order granting extension of time, made by the Commissioner of Reclamation and of date, March 3, 1926.

Commissioner: There being no objection, said order is accepted.

It is understood by and between the parties, permit holder and protestant, that all records on file in the Department of Reclamation, relating to Permit 10415, are considered a part of the record in this case.

Mr. Stephan: We are offering another photograph, marked Exhibit "N".

Commissioner: Protestant reserves the right to offer objection to the said Exhibit "N".

Mr. Stephan: At this time we are offering as permit holder's Exhibit "O", affidavit on the part of the permit holder, Wm. C. Hazzard.

Commissioner: Conditioned that affiant, Mr. Hazzard, be available for cross-examination by protestant, protestant offers no objection to introduction of permit holder's Exhibit "O".

Mr. Stephan: Now we would offer at this time as several exhibits, portions of the transcript in the case of Mary E. Syster, plaintiff, versus Wm. C. Hazzard and others, tried in Gooding County, in the Fourth Judicial District of the State of Idaho, and thereafter appealed to the Supreme Court of this State.

Commissioner: Exhibits "P-1" and "P-2", being two volumes of transcript filed in the case before the Supreme Court, in the case of Syster versus Hazzard are offered in evidence by permit holder, with the understanding that the same will be withdrawn for use by permit holder.

Commissioner: No objection being offered to the said exhibits, the same are received.

Mr. Stephan: We would like the record to show particular reference to folios 678 to 690, folios 605 to 608, folios 662 to 665, folios 1886 to 1887, folios 1677 to 1699, folios 1772 to 1781, folios 1846 to 1847, folios 1864 to 1866, folios 1971 to 1974, folios 2055 to 2056, both numbers being included in each instance.

Mr. Stephan: We are offering in evidence at this time, as Exhibit "Q", an option to purchase, of date February 6, 1926, made by Mr. Hazzard and wife with the city of Twin Falls.

Mr. Hawley: I object to the introduction of Exhibit "Q" on the grounds that it is immaterial, irrelevant and incompetent and that the time for performance of the contract is fixed as of July 1, 1927, after the expiration of this permit.

Commissioner: The Exhibit will be received and considered in connection with protestant's objection.

Mr. Stephan: That is all of our introductions at this time.

MR. E. V. BERG called as a witness for permit holder, having been duly sworn, testified as follows:

MR. Stephan:

Q You reside where Mr. Berg?

A Twin Falls.

Q And your business and occupation?

A Engineering

Q Are you a graduate engineer?

A Yes, sir.

Q From what school?

A Cornell University.

Q What year?

A 1902

Q Since you were graduated, have you been actively engaged in engineering?

A Yes, sir

Q Will you state, Mr. Berg, the nature of your work, and experience since that date?

A It has been electrical and constructional engineering and in irrigation work?

Q What work are you engaged in at this particular time?

A Engineering.

Q Are you not now acting as city engineer for the City of Twin Falls?

2 2027

A Yes sir.

Q Do you know Mr. Hazzard the permit holder?

A Yes sir.

Q Do you know where his residence is?

A Yes sir

Q Are you acquainted with the location of Clear Lake?

A Yes sir

Q Mr. Berg can you locate what has been referred to in this record as Exhibit "N"

A Yes sir

Q I will ask you to state if you are familiar with the canyon wall and the body of water that appears in the picture?

A I am.

Q Handing you Volume 1 of the transcript of the Syster case and permitting you to look over what appears to be a copy of Permit 13362, I will ask you to state, if you can identify the points of diversions, as shown on the picture.

a Well, I don't think the picture shows the points of diversions.

Mr. Hawley: I object to the consideration of Permits 13362 and 13363, to any testimony with reference to them or to the source of water for them, on the grounds that those permits and the physical conditions affecting them are immaterial, irrelevant, and incompetent. I understand that this hearing is for the purpose of getting an extension of time under Permit 10415 and is not for the purpose of questioning the validity, nor engineering or economical conditions of feasibility of Mrs. Syster's Permits 13362 and 13363. I do not see what those permit have to do with this case at this time. I feel that the application for extension must stand or fall upon the facts which are presented as to the right of the application being extended under the 1925 Law and certainly it should make a showing before any question of Permit 13362 and 13363 should be made.

2 2027

Commissioner: The objection of the protestant to introduction of testimony to show the unfeasibility and impracticability of development under Permit 13362 and Permit 13363, is sustained in so far as such testimony relates to practicability of the permits; that any evidence which permit holder desires to submit purporting to show his faith and effort of construction under his permit will be admissible, including a showing of acts of protestant which may have in any way frustrated or prevented prosecution of the work.

Mr. Stephan: That is all.

William C. Hazzard, called as a witness for permit holder, having been duly sworn, testified as follows:

MR. STEPHAN:

Q Your name is William C. Hazzard?

a Yes sir

Q Where to you reside?

A At Clear Lakes in Gooding County.

Q How long have you lived there?

A Since the fall of 1913, with the exception of one winter, when I lived in the city of Twin Falls.

Q Mr. Hazzard you arethe owner of Permit 10415?

A Yes sir

Q Issued by the Commissioner of Reclamation of this State?

A Yes sir.

Q You are the same party who appeared as one of the defendants, I believe in the case of Syster versus Hazzard and others, which was originally tried in the District Court of Gooding County and later appealed to the Supreme Court of the State of Idaho?

A Yes sir.

Q Mr. Hazzard, under Permit No. 10415, you ask to develop power, where?

A At the outlet of Clear Lake,

Q And Clear Lake is located, where

A Clear Lake is located in Gooding County.

Q Can you locate the point of diversion?

a The point of diversion is located in Lot 7 -------

Commissioner: It is admitted that Mr. Hazzard is the owner and holder of Permit 10415 and seeks to develop power from Clear Lake in Gooding County, Idaho; at the point of diversion designated on the permit map.

Q Well now, Mr. Hazzard, you may relate in a general way to the Commissioner what you have done under Permit 10415 in the way of doing the necessary work to divert the water and develop power of Clear Lake.

Commissioner: Suppose you let the record show then that no testimony will be offered that has already been presented and which appears in the transcript which has been offered in evidence in the case of Syster versus Hazzard; that only testimony constituting evidence of good faith will be offered and presented.

Commissioner: Gentlemen, if there is no objection, we will now recess until two o'clock.

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2 P. M., Monday, March 22, 1926.

W. C. HAZZARD, heretofore duly sworn, upon being recalled, testified as follows:

MR. HAWLEY: This is cross-examination of Mr. Hazzard, in furtherance of objection.

CROSS EXAMINATION

By Mr. Hawley:

Q What is the date of the subscriptions of stock in the Farmers Mutual Power Company?

A The spring and summer of 1919.

Q Was any effort made to collect in on the subscriptions?

A Why, I made no effort -- I made an investigation to see whether it was probable whether they would be paid or not.

Q Do you know each and every man whose name is listed?

A Well, I attended the meeting of the stockholders. I was invited to attend the meeting of the stockholders at the time they were organized, in Buhl, and met most of these men personally.

Q Have you ever seen financial statements of the assets or liabilities of any of the subscribers?

A I never saw a financial statement, but I have talked with men who were acquainted with them.

Q Have you ever talked with any of these subscribers yourself?

A Yes, sir, a great many of them.

Q What ones?

A I talked with Mr. Sonner; I talked with Mr. Peterson, and Mr. Ericson, Mr. Peter Ericson.

Q And who else?

A With Mr. Pat Murphy, of Filer, and Mr. Crom; Mr. Benton, of the Times Publishing Company.

Q Those are the men you talked to?

A There are others, but those are the names that occur to me just at present.

Q How many others have you talked to?

MR. STEPHAN: I would suggest that you permit Mr. Hazzard to look over that list and he can probably tell you very quickly, Mr. Hawley.

MR. HAWLEY: Yes. (Handing document to witness.)

A Mr. Glodowski, Mr. Ambrose, Mr. Ericson.

Q That is the same one you named?

A Yes, sir. Mr. Murphy.

Q The same one you named?

A Yes, sir. Times Printing Company.

Q That is the same one you named?

A Yes, sir.

Q Mr. Crom, of the Crom Building Company?

A Mr. Crom of the Crom Building Company. Mr. F. S. Nicholson. Mr. E. H. Pember. Mr. John Massey. Mr. E. J. Spike. Mr. J. H. Renike. Mr. Werner. Mr. Krieger. Mr. Jagels. Mr. F. D. Wagener. Mr. Liermann, Carl Liermann and Emil Liermann. Mr. D. M. Denton. Mr. J. F. Nipper. Mr. Ralph Smalley. Mr. E. A. Littler. Mr. Ward V. Sonner. Charles F. Smalley. That is as many as I remember.

Q Any others, probably?

A Well, yes; at the times of those meetings, of this particular meeting, and then at a meeting held by certain members later.

Q When were these two meetings held?

A One was held at the time of the organization of the corporation, at Buhl.

Q In 1919?

A 1919, yes, sir.

Q When was the other held?

A The other meeting was held some time in the spring before --

Q 1918?

A 1919.

Q And have you talked to any of these men since then?

A Yes, sir.

Q That is really what I was trying to arrive at, -- the names of the men you have talked with who belonged to this company, since the case was decided by the Supreme Court.

A Yes, sir.

Q Did you talk to these same men?

A Some of those same men, yes, sir, and I talked to the directors quite largely, of the corporation.

Q Did any of these men say to you that he couldn't pay the thousand dollars or five hundred dollars that he subscribed?

A Yes, sir.

Q Who?

A Mr. Sonner.

Q He said he couldn't pay the thousand dollars?

A Yes; he said it would be very hard for him to pay it, and it would be impossible, the way things was going, and it was up to the directors to collect the money; it wasn't up to me to collect the money, unless they failed. But we held several meetings with them, and they gave it as their opinion

that that money could not be collected. They had made efforts, they said.

Q Who told you that?

A The directors.

Q Who?

A Mr. Peterson was one of the directors.

Q When was that?

A Mr. Ericson, Mr. Pete Ericson; that's the name.

Q Did any of these other individuals tell you at any time that he wasn't able to pay the subscription, other than Mr. Sonner?

A The then president of the board. What was nis name?

MR. HERRIOTT: I can't remember it right off.

A (Continuing) Homling -- he is a Russian. I don't know how to spell his name. His name is not on that particular list. That is only a partial list of subscribers.

Q Their subscriptions total $83,000, however?

A On that it totals $83,000, but there were --

Q (Interrupting) What other men besides Mr. Sonner and Mr. Homling?

A Mr. Pete Ericson, three members of the board, and this other member whose name I am trying to think of. He was president of the board. All members of the board were present at these meetings. We had several meetings with them.

Q That is since 1924, or since the decision?

A Yes, sir.

Q And those four men said they couldn't pay, individually?

A Yes, sir.

Q Did you speak to anybody else who was a subscriber?

A Perhaps one or two individuals like Mr. Littler there.

I think Mr. Littler was one I talked with, and I talked with Mr. Nicholson. Mr. Nicholson came to my house to see me about it.

Q Now is that all?

A That is all I remember at present.

Q The responsibility of any of these individuals you then do not know, excepting those who said to you that they would find it hard to pay, or couldn't pay?

A I know from talking with men like Mr. Warner, who has been in the note brokerage business there in Twin Falls. I have talked with him about a good many of those individuals, and especially with the board of directors, yes, sir.

Q They just didn't think that it would be wise to attempt to make collections?

A They were very positive about it, Mr. Hawley. They said it would be impossible to collect the money.

Q In any event, no effort was made to collect the money?

A Yes; we served notice on them to pay the money, in accordance with the contract.

Q And that was all you did?

A Yes; we served the legal notices on them.

Q And beyond that you didn't go?

A We didn't go into court, no, sir.

Q Nor did you go beyond that?

A No, sir.

Q Now, the Twin Falls tract contains the residences of all these men, does it?

A Yes, sir.

Q What was the condition of that tract during the fall of 1925, financially?

A In 1925?

Q Yes.

A Well, it had begun to come back in 1925, some, after the crops were marketed.

Q It had come back to quite an extent?

A Yes, it had begun to come back in 1925, when they began to get returns from their crops, in the late fall and early winter.

Q But you had, about the first of December, 1924, rescinded, released or annulled the contracts with the Farmers Mutual Power Company?

A Yes, sir.

Q Beginning with December of 1924, when, as I understand it, you did release this contract, did you attempt to interest other financial agencies?

A Yes, sir.

Q Were you able yourself to finance this proposition?

A Not personally, no, sir.

Q You talked to a great many persons in order to get them financially interested in it, did you?

A I was invited by the Chamber of Commerce of the City of Twin Falls to appear before them and make a proposition to the Chamber of Commerce as to taking care of this Clear Lake power property.

Q Did you take it up with anyone else excepting the Chamber of Commerce?

A Yes, sir.

Q Who did you take it up with?

A I took the matter up with a lady by the name of Mary O'Neill, who represents mining companies, that is, that is what she told me, mining companies of Butte, Montana, who

were thinking of going into the Contact mining country, and wanted power for that purpose.

Q Well, did she turn the proposition down?

A Well, she was unable to finance the proposition.

Q And with whom else did you take it up?

A I took the matter up with my father-in-law, who is a business man in Milwaukee, and tried to get some of his friends and some of my friends there to finance this proposition, or go into it.

Q The same people that had previously put up money?

A No, sir.

Q Did you go to the same people that had put up the money previously?

A No, sir, I did not personally go to those men.

Q Did you see anybody else, then, or get in contact with anyone else?

A We had some people that wanted to take an option, with the idea of raising the money.

Q Did you let them do it?

A No, sir.

Q You weren't satisfied that they were able to carry out the plan?

A No, sir, we were not satisfied.

Q Then was there anyone else that you may have in mind with whom you got in contact or attempted to get in contact?

A I don't recall anyone else just now, Mr. Hawley.

Q Have you made an option to the city of Twin Falls?

A Yes, sir.

Q When?

A A proposition was made, as I stated a moment ago, through the Chamber of Commerce, and at their request I made

a proposition to the city.

Q When?

A That was made about a year ago, wasn't it, Mr. Herriott?

MR. HERRIOTT: I have forgotten the date. Do you know, Mr. Ericson?

MR. ERICSON: There must have been something done under the old administration, because that commission was appointed to go to Tacoma.

A (Continuing) It was some time, I think, in the month of February.

Q (By Mr. Hawley) Of 1925?

A Yes, sir.

Q And the present status of the relationship is expressed in the option that you have given to the city?

A Yes, sir.

Q The city has been advised that it has no power, or, at least, the power is so questionable that it could not raise finance to build this project?

A In accordance with the interpretation given to the present law, that is, to raise a bond issue or vote a bond issue that would cover not merely the plant or a part of the plant, but the entire system.

Q How much of a bond issue?

A Mr. Berg could give that better, because he made a report. He was the engineer and made a report as to the --

Q (Interrupting) Don't you recall?

A Something like five or six hundred thousand dollars.

Q Now have you made an attempt to secure this finance from any other quarter or source than you have indicated?

A No, sir.

Q The ability of the city of Twin Falls having been questioned, there then remains these things to be done: First, the Idaho legislature must make a new law or change existing laws so as to permit a proper financial scheme to be formed, isn't that the first step?

A That was as I understand the recommendation of a special committee that the mayor appointed to investigate this subject.

Q Second, the people must then, under the terms of such proposed law, agree to issue the bonds?

A Yes, sir.

Q Third, such bonds must then be sold?

A Yes, sir.

Q And then the structure built?

A Yes, sir.

Q You, of course, have no assurance that the first step can be taken?

A Except this, that the legislature has practically passed that same legislation for the city of Lewiston. I should think they would not deny the city of Twin Falls the rights which they have already granted the city of Lewiston.

Q That is your only reason then for believing that the law can pass?

A Well, I believe it is reasonable and should pass.

Q You, of course, have no assurances, and can have no assurances, that such a law would be passed?

A Of course, that would depend upon the action of the legislature.

Q What if the legislation fails?

A The farmers want to take it up again. They have been to me by committees and individuals time and time and again.

Q You would then be forced to the organization of some such company as the Farmers Mutual Power Company?

A It is still in existence, and I understand they are willing to go ahead.

Q I thought you said they were financially unable to.

A They were, at the time I canceled the contract.

Q They have since become financially able?

A Since the marketing of the crops of 1925 they believe they could now put the thing through.

Q When did they become financially able to put it through?

A They have advised me of the fact within the last four months, four or five months.

Q Well, to be specific, when?

A After the marketing of their crops last year they began to come to me and talk with me about their ability to go on with this.

Q When did you make up your mind that they could probably finance the enterprise?

A Just recently, in the last few weeks.

Q When did they market their crops, -- in November?

A Well, I couldn't say as to that. I suppose the most of them were marketed in November and December, and a good many of their crops are held yet, such as potatos and some beans.

Q Well, you say within the last six weeks you have made up your mind that they could finance it?

A Yes, sir.

Q Now what assurance have you that the people of Twin Falls would vote a bond issue of the magnitude that would be necessary to finance this enterprise?

A In talking with the officials, like Mr. Ashton, and residents like Mr. Smith, and others, just as I have talked with individuals.

Q What prominent people in Twin Falls are against the bonding of the city for this amount?

A I don't know, Mr. Hawley, that I have ever talked with anyone who so expressed himself to me.

Q Have you been informed of anyone who is against the proposal?

A The manager of the Idaho Power Company.

Q And who else?

A Well, Mr. Keel I think has so expressed himself.

Q Well, and are all the city council and the mayor in favor of the proposition?

A Well, the mayor is present, and he can express himself better than I can on that.

Q How about the others, then?

A I don't know.

Q How about the newspapers?

A I know that the Times is very much in favor of the municipalization of power.

Q What is the other paper?

A The Daily News.

Q How does it stand?

A I think it is opposed to it.

Q Then there is opposition, is there not, to the proposal?

A I think there is, yes, sir; there generally is to such propositions.

Q What is the bond issue of Twin Falls city now?

A I do not know.

MR. HAWLEY: What is it, Mr. Mayor?

MAYOR ASHTON: I can't tell you at all.

MR. HAWLEY: Doesn't anybody here from Twin Falls know what their bond issue is?

MR. STEPHAN: I don't, Mr. Hawley.

MR. HAWLEY: About $600,000 against the city, isn't there?

MAYOR ASHTON: I don't know.

MR. HAWLEY: Well, that is my information.

Q (By Mr. Hawley) The city owns its own municipal water plant, does it not?

A Yes, sir.

Q Do you know the bonds out on that?

A I do not.

MR. HAWLEY: Do you, Mr. Mayor?

MAYOR ASHTON: Something like $300,000, I think, altogether.

MR. HAWLEY: For the water system?

MAYOR ASHTON: Yes. Isn't that pretty close to it, George?

MR. HERRIOTT: I think so.

Q (By Mr. Hawley) And of course it goes without saying that you have no assurance amounting to positiveness about the action of the people a year from now when this thing would be submitted to them, probably, or a year from next June or July?

A I believe if they could build the power by steps, I believe the city of Twin Falls would vote the bonds necessary

to build the plant.

Q That is just your belief?

A That is my belief, after talking with different individuals of the city. They are looking for relief.

Q What is the amount for which you are to sell this plant to the city?

A $43,000.

Q That includes, of course, all of the work that is done?

A Yes, sir.

Q I assume that that sum barely pays the actual amount that you are out, together with interest on it?

A And it wouldn't pay me for my time.

Q Has the Farmers Grange subscribed or agreed to subscribe anything to the building of this plant?

A That passed resolutions at their meeting.

Q When?

A About two months ago.

Q Saying that they were willing to subscribe?

A Saying that they were in favor of doing everything that could be done to hold the Clear Lake power site for the farmers and the towns of the Twin Falls tract, was about the sum and substance of their resolution.

Q Just an expression of good will toward the proposition, rather than any definite offer of assistance of any kind?

A An expression of their feelings in the matter.

Q That was all?

A Their desires, yes, sir.

Q I note that you charge that the charges for electrical service made by the Idaho Power Company are exorbitant. What charges did you refer to, what schedules?

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A For lighting, power charges.

Q What is the lighting charge?

A I believe it is ten cents.

Q That is for how much?

A I don't know exactly what that schedule --

Q (Interrupting) A sliding schedule, the highest charge being ten cents?

A Ten cents, yes, sir.

Q Ten cents per what?

A A kilowatt hour.

Q And the power charges you refer to are how much?

A Well, that depends on the power.

Q What is the particular exorbitant charge that you had in mind?

A I am basing my judgment simply on opinions as stated to me by users.

Q Who?

A Well, the Milling Company in Twin Falls is one; Mr. Breckenridge; and Mr. Gray, of the Gray Elevator, in Buhl.

Q Who else?

A Store keepers who use electricity for lighting.

Q How many store keepers, and who are they?

A One man I talked with was a druggist.

Q Who?

A Mr. Elison.

Q Who else?

A I talked with the Ice Company, the proprietor of the ice plant at Buhl, that uses a good deal of power.

Q Anyone else?

A I don't recall just now, Mr. Hawley.

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Q What price will the city of Twin Falls make, under the $600,000, for power?

A What price would they make?

Q Yes, or have they ever figured the thing out?

A I think they never figured it out. Mr. Berg made the report. I think he figured in his report that on the basis of the present charge that the city would make about $63,000 a year, if they were running the Clear Lake plant.

Q How many horsepower can be developed under your plant?

A About five thousand horsepower, at the lake level, and by raising the lake and bringing in pondage I think he figured something more than that. The lake could be raised between fifteen and twenty feet, which would add a good deal to the five thousand.

Q How much?

A Probably twenty-five hundred horsepower.

Q By raising the lake fifteen feet?

A Fifteen to twenty feet, yes, sir.

Q You would get over one-half of an increase over the amount?

A That is primary and secondary power, Mr. Hawley.

Q What do you mean by secondary power?

A That is the pondage for peak load purposes.

Q How big a plant would you put in then?

A How big a plant?

Q Yes.

WITNESS: What was your report, Mr. Berg?

Q (By Mr. Hawley) You don't know that?

A No. Mr. Berg figured it out for the city and made a report.

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Q Well, he probably will be on the stand, I suppose. Have you ever gone to the Utilities Commission for relief from those rates that you say these half dozen people claimed were exorbitant?

A Have I ever gone?

Q Or they?

A I don't know, Mr. Hawley. I think there is a case now in the courts.

Q Have you ever planned, constructed, built, operated, or financed an electric utility, or managed one?

A Only this one.

Q As far as it has gotten?

A As far as it has gotten.

Q This is your sole experience?

A Yes, sir.

Q Do you know whether any of the gentlemen who are associated with you have ever either built, constructed, or managed a power utility?

A No, sir.

Q You say they haven't?

A They have not.

Q Do you hold Mrs. Mary E. Syster or the Idaho Power Company responsible for the financial depression in Twin Falls County or in any part of Idaho?

A No. I simply hold them responsible for holding my proposition up until the financial condition was in such shape that my financing fell through.

Q You have reference to the suit of Syster vs. Hazzard?

A Yes, sir.

Q And that is all?

A Yes, sir.

Q Right after you took this matter up with the Twin Falls Chamber of Commerce did you have a talk with Mr. and Mrs. Syster about them going in with you?

A Going in with me on the proposition?

Q Yes.

A Not that I remember of.

Q About raising the lake? Did you attempt to get them to go in with you to raise the lake and make pondage?

A Oh, I told them that the council of Boise had talked with me about that, and they asked me about pondage there. That was when I mentioned it to the Systers, and that is all the conversation that I ever had with them about it.

Q Did they object at that time to the power site that you had, on the grounds that it wasn't a good development of the waters or wouldn't sufficiently develop the resources of Clear Lakes?

A Not to my knowledge, Mr. Hawley.

Q Did you at that time suggest to them that when they expressed some doubt as to the feasibility of your power site and the development planned in connection with it, that you would get your money out of it and so would they, and that it wouldn't make any difference if you were selling the city of Twin Falls a sieve, that you would all get your money out of it?

A No, I don't remember such a statement.

Q Have you spent a five-cent piece since prior to 1917 on the actual works of diversion?

A You mean prior or since?

Q Since.

A On the development?

Q Yes.

A Not directly on the development, no, sir.

MR. HAWLEY: That is all.

RE-DIRECT EXAMINATION

By Mr. Stephan:

Q Mr. Hazzard, do you know if, during the period that you were engaged in fighting this case in the District Court in Gooding County, and also in the Supreme Court, the subscribers to the stock of the Farmers Mutual Company were willing to engage in the matter of developing power at Clear Lake?

A Yes, sir.

Q If you had been permitted to follow up the business end of the proposition and had not been required to put your time and effort and money in the case of Syster vs. Hazzard and others, could you have financed, and could the Mutual Company have gone ahead with the matter of developing power there?

A Yes, sir. It was financed and they were anxious to complete the works there, and had employed an engineer, Mr. Barry Dibble.

Q The Syster case, already referred to, actually kept you in court and in litigation for approximately how long?

A During six or seven years.

Q Between six and seven years?

A Yes, sir; from December, 1917, to November 1, 1924.

Q I don't know that I am very familiar with that case, but I understand that that case terminated favorably to you?

A Yes, sir.

Q And proved that the contest or the contests on the part of Mrs. Syster did not have foundation of merit?

A Yes, sir.

Q You referred to the possibility of developing horsepower at Clear Lake, and I think you told Mr. Hawley that you could develop from the present level of the lake approximately five thousand horsepower?

A Yes, sir.

Q You also told him that the level of the lake could probably be raised twenty feet?

A Between fifteen and twenty feet.

Q Have you ever considered carrying that body of water to a point further below where it is now diverted and goes into the Snake River?

A Yes, sir.

Q I wish you would state to the Commissioner what possibilities there are in that regard.

MR. HAWLEY: I object to that as incompetent, irrelevant, and immaterial. There is no statement in the pleadings in connection with it, and the permit itself settles the point of use, and can't be changed vervally or by a statement of this type.

COM'R SWENDSEN: The objection is overruled. You may proceed.

A I owned the riparian rights extending from the outlet of Clear Lake along Snake River for a distance of about a mile and a half down the Snake River. Within the distance of about three-quarters of a mile from the outlet of the lake the river falls, according to Government reports, approximately fifty feet. The ridge around Clear Lake, which is between fifteen and twenty feet high, extends down through my place, and at the present time I have an irrigation ditch that took water out for irrigation purposes out of the lake. Now the entire body of

Clear Lake water could be carried down on this ridge, and there could be taken advantage of the fifty-foot fall in the lake, in addition to the raising of the level of the lake by an impounding dam, so that the amount of power created there by doing that could almost be doubled, and it would be, I believe, a practical proposition. If the city of Twin Falls should take hold of the proposition I believe it would pay them to look into that and make a thorough survey of it.

Q And you say the fall in the river within that three-quarters of a mile is approximately fifty feet?

A Yes, I believe about fifty feet. There is an immense rapids in the river there.

Q Then you think that, together with the rise in the level of the lake, the possible rise in the level of the lake, would make a head of water of about --

A (Interrupting) Between 140 and 150 feet, about 145 feet.

Q Now with regard to the crops on the Twin Falls tract and in that vicinity, Mr. Hazzard, generally speaking, what kind of crops, as to being good or bad, were produced on that tract and in that neighborhood during the crop season of 1925?

A Excellent, very excellent, and the prices were exceptionally good for almost all crops.

Q Are the farmers enjoying as much or more prosperity than they have during the past five years?

A Yes, sir.

Q What crops would you say, Mr. Hazzard, to date, have not been disposed of, and the purchase price realized thereon?

A Well, I heard that there was some potatos that have not been sold, that have been held, and some beans.

Q What about the wheat?

A And there is some wheat, some wheat. That doesn't mean that the prices on those products were not good. They are just holding them.

Q You do know, as a matter of fact, do you not, that the wheat and the potato price is good right now?

A Yes, sir, it is.

Q What investigation, Mr. Hazzard, have you made within the last six or eight months to determine whether or not there is a growing sentiment in the Twin Falls, on the Twin Falls tract, with regard to mutual organizations, and the cities in that neighborhood acquiring this particular power site?

A A great many farmers' organizations have passed resolutions about the matter. Committees of farmers have visited me and invited me to their meetings. I was invited at one time by a farmers' committee to go before the canal board to see if they couldn't get the canal board to take up this matter in connection with their distribution of water. Their thought was that the canal system could handle the electricity for them just as well as handling the water. And I went with a number of farmers to the canal board meeting for that purpose.

Q Don't you know, Mr. Hazzard, that, as a matter of fact, at the election of the stockholders of the Twin Falls South Side Canal Company, in the early part of January, 1926, that immediately prior to that election there was an attempt on the part of some of the stockholders to bring that to the attention of the canal company?

A Yes, sir.

Q At that election?

A Yes, sir.

Q Now with regard to the two Mr. Warners who have signed an affidavit as to the financial standing of certain subscribers to the Farmers Mutual Power Company: First, considering Mr. L. A. Warner, who is he?

A Mr. L. A. Warner is a note broker, money lender, and he has been looking after the loans, as I understand it, of some Chicago people who have loans in this Twin Falls country.

Q What people were those -- the Continental and Commercial National Bank?

A I think that was one concern, yes, sir.

Q And also certain Iowa interests?

A Yes, sir.

Q Who formerly were interested in the Citizens State Bank of Buhl?

A Formerly interested in the Citizens State Bank.

Q Prior to the closing of that bank in December, 1921, do you know if he had been connected with that bank for the purpose of improving the condition of the bank's paper?

A Yes, sir, he worked in the bank there for quite a long time.

Q He is also an attorney?

A He is also an attorney.

Q Residing at Twin Falls?

A Residing at Twin Falls.

Q And what would you say as to his knowledge regarding the business ability and financial standing of the people generally in and around Buhl, and particularly these subscribers to the stock of the Mutual Company?

A Excellent.

MR. HAWLEY: Well -- All right, go ahead. I don't think that kind of evidence is worth a great deal. We ought to have the man here.

MR. STEPHAN: I understand that, of course, Mr. Hawley.

MR. HAWLEY: I don't object to it, because it is very informal, but I do submit that that is pressing the rules of evidence to the straining point.

COM'R SWENDSEN: I rather concluded myself that we would have to accept it for what it is worth. But you may proceed with it, if you care to.

MR. STEPHAN: Of course, outside the record, I might say that things that we are bringing out through this witness we can substantiate, so far as Mr. Warner is concerned. I doubt if there is anybody in that part of the country that has more intimate knowledge regarding those people than Mr. L. A. Warner.

MR. HAWLEY: Of course, if he were here I might develop, as I did with Mr. Hazzard, that the gentleman had a power company but had a desire not to pay. In short, it is rather a far stretch of the imagination to say that Mr. Warner might not, if he were on the witness stand here, give us some very good information as to the possibility of making these men pay, if that sort of question were in the case.

MR. STEPHAN: Well, I don't think so. I don't think you have developed that through Mr. Hazzard. I take issue with you on that, because the record does show, as I see it, that they did not pay when demanded to pay.

MR. HAWLEY: Well, we are not forced, you know.

Q (Mr. Stephan) With regard to the financial condition of a great many of the citizens in the west end of Twin Falls county, particularly around Buhl, Mr. Hazzard, I will ask you to state generally to the Commissioner what has been their condition since the fall of 1920, up to the cropping season of 1925?

A It has been in a very low condition, so low that, -- their condition has been such that they have been unable to pay their debts; and we have had two bank failures in the city of Buhl, the Citizens State Bank and the First National Bank.

Q And the Citizens State Bank that you have spoken of failed when?

A About 1921.

Q December 2nd, I might state that in the record, if there is no objection, December 2, 1921. How many banks were there in Buhl at that time?

A There were three banks.

Q And has any other bank failed?

A The First National Bank has failed.

Q When did that bank fail?

A That bank failed about a year ago.

Q That was the First National Bank?

A That was the First National Bank, yes, sir.

Q Mr. Hazzard, if you were given an extension of time to complete your works necessary at Clear Lake, would you feel justified in yourself putting any further money into the proposition, within the next couple of years?

A Yes, sir, I would; I would put any money that I could get into the proposition.

Q Do you need additional time, Mr. Hazzard, in order to complete the works which you have started?

A Yes, sir.

Q If such time is not granted to you is there any part of the expenditures that you have already made that you can save?

A No, sir.

Q It will be lost?

A It willbe lost.

Q And you have actually expended -- well, I guess that is in the record; that appears --

COM'R SENDSEN: I was going to make an inquiry as to whether it appears now in the record what has been expended and what the estimated cost of completion is.

MR. STEPHAN: It does not appear in this record, possibly. It does in the Syster case. We might on that inquiry have Mr. Hazzard follow that up and answer any further inquiries that the Commissioner would like to make.

COM'R SWENDSEN: It might facilitate the whole matter if he could state briefly what the total estimated cost is.

A How much has been expended so far?

Q (Mr. Stephan) How much to date?

A I have expended about $25,000 to date, of which the Supreme Court allowed something over $19,000. My personal expense and that sort of thing they did not allow. However, I had expended it.

Q What is the estimated cost of the works necessary to put this water to a beneficial use?

A The testimony in that case was about -- of Mr. Berg, was, I think, $34,000, to finish the works, complete the diversion works. The court found that $50,000, at that time, would have been necessary to have completed the works, and gave me credit for about between nineteen and twenty thousand dollars worth of work having been done, so that I did more than the one-fifth of the work.

Q I can readily understand why there might be some question about who owns this power site if that thing can be developed for $50,000.

A That is just the diversion works.

Q It don't contemplate the water wheels or --

A (Interrupting) No, sir; just the diversion works.

Q Sufficient work to actually divert the water?

A Yes, sir.

Q From its natural channel?

A Yes, sir.

Q What is the estimated cost of completing the power plant, not including transmission lines?

A About $250,000.

Q What capacity?

A About 5,000 horsepower.

Q That does not contemplate availing yourself of the additional head that you spoke of recently?

A No, that doesn't include that.

MR. E. V. BERG: That includes raising the present dam, as at present constructed, three feet, in order to take advantage of some pondage.

Q (By Com'r Swendsen) You spoke of the possibility of extending the point of return further down stream, and thus obtaining additional head. None of that proposed

extension is incorporated in the permit as it now stands?

A No, sir.

COM'R SWENDSEN: I have nothing else.

RE-CROSS EXAMINATION

By Mr. Hawley:

Q When was the last work that you performed on this site?

A November, 1914.

Q Did you have any more money then to go ahead, or had you spent all your money?

A Well, we had money then.

Q How much?

A Well, the Kupmeyers were in the proposition.

Q You had no money in the treasury, had you?

A They had plenty of money.

Q But you had no money in your company treasury? It was a company that did this?

A Yes, sir.

Q What was the name of the company?

A The Clear Lake Power & Improvement Company.

Q It put up all the money, didn't it, Mr. Hazzard?

A Who did?

Q The company?

A It was being financed by the Kupmeyers, who were members of the company, yes, sir.

Q You say you expended the money. As a matter of fact, you didn't expend the money? It was the Kupmeyers, was it not, who expended the money, through the medium of the company?

A I testified in the court; it is in the record that I was in about between seventeen and eighteen thousand dollars personally.

Q Of which the court cut out how much?

A None. The record stands.

Q Then you were in about seventeen or eighteen thousand dollars?

A Between seventeen and eighteen thousand dollars at that time.

Q Now the company did all this work, and didn't do any more work, and you had to sue the company for moneys due you, and took over the works?

A Yes, sir.

Q The work was all done under permit 7056, and then applied to a new permit that you had taken out in your individual name, while you were general manager of the company?

A There was about five thousand dollars worth of work done in the fall of 1914 that was done after this permit was taken out.

Q But the Supreme Court did hold with Mrs. Syster, that 7056 was not a valid permit?

A Yes, sir, that that has been abandoned.

Q Now, after you personally got this project you spent no more money in the construction work?

A No, sir. It was ~~xixxx~~ tied up by the Idaho Power Company.

Q The Idaho Power Company, what did it have to do with your getting money at that time?

A They started the suit.

Q At what time?

A Started in the fall of 1917, December.

Q You persistently state that the Idaho Power Company was responsible. That was one of your claims in the trial of the case, was it not?

A That was their admission, that they were --

Q (Interrupting) That was one of your contentions all through the trial and all through the Supreme Court, was it not, through your counsel?

A I think so.

Q Was the Idaho Power Company made a party at any time to the suit?

A They admitted that they were in it.

Q Was the Idaho Power Company ever made a party to the suit?

A They admitted that they would be bound by this decision. You made that admission yourself, Mr. Hawley.

Q I asked you a question. You can say that, yes or no.

A As to whether they were an actual party?

Q Yes.

A No, they were not.

Q They were never joined at any time, were they?

A No, sir. We tried to join them.

Q What happened?

A You denied interest.

Q Denied any interest?

A Yes, sir.

Q And the court thereupon refused to permit the Idaho Power Company to remain a party, didn't it?

A You denied any interest, before the State Engineer here.

Q And it was not made a party to the suit?

A It was not made a party.

Q Didn't you try to make it a party to the suit?

A How is that, Mr. Herriott?

MR. HERRIOTT: We tried before the State Engineer to bring them in and make them a party.

COM'R SWENDSEN: I think it would be more appropriate if you would answer according to your own knowledge, and if they want this information they can call other witnesses.

WITNESS: All right.

Q (Mr. Hawley) But you attempted to bring the Idaho Power Company into the suit as a party, didn't you?

A Before the State Engineer.

Q No, that isn't a suit. Before the Court?

A No, sir.

Q In any event, the Power Company is not a named party in any of the actions, is it?

A No, sir, not as a named party.

Q Now what happened between 1914 and the beginning of the action by Mrs. Syster in 1918, wasn't it, that she brought her action?

A 1917, December, 1917.

Q Was when the action was filed?

A Yes, sir.

Q That is, the contest before the State Engineer?

A Yes, sir.

Q What happened in that three-year period from 1914 to 1917, so far as financing the project was concerned?

A The Kupmeyers were in the company and had promised to finance the proposition, and they testified before the Public Utilities Commission that they were able to do the financing.

Q Well, what happened, though, between the time you quit work in 1914 and the bringing of the action by Mrs. Syster?

A Well, the proposition went through litigation, and I took the property over.

Q You didn't have any financial means, of course, of your own?

A Not personally, no, sir.

Q And you couldn't get anybody during that three-year period to put up any money?

A I had to get the Kupmeyers out first; I had to get the property in my own name before I could do anything.

Q When did you get the property in your own name?

A I think the legal title passed to me, the sheriff's deed came to me in 1917. The property was sold, I believe, in 1916.

Q Well, to cut it short, there was nothing done, and you didn't attempt to get any financing during that three-year period?

A I was tied.

Q That is your answer? Now, do you know how many voters there are in Twin Falls?

A No, I don't know how many voters, Mr. Hawley.

Q Haven't you looked into that matter?

A The number of voters?

Q Yes.

A No, I don't know the exact number of voters, no, sir.

Q You haven't gone far enough, then, into the proposition at Twin Falls to even know how many votes it will probably take to put this over, have you?

A I believe it takes a two-thirds vote.

Q But as to the number, you don't know anything about that?

A I simply know that the Chamber of Commerce took a vote on it, and I think everybody voted for it that were present, except one man.

Q How many were present?

A I don't know. It was a kind of an annual wind-up. I guess most everybody was there.

Q Well, that would still leave us in the dark as to the answer.

COM'R SWENDSEN: Answer the question, if you can, as to the number of voters.

A I can't answer that, no, sir.

Q (Mr. Hawley) Now this talk about changing the place of use in the conduit for appropriation or carriage of the water to its place of use and building pondage, all of that is aside and in addition to your permit here?

A Yes, sir.

Q Are you an engineer?

A No, sir.

Q Of course, of your own knowledge, you know nothing whatever as to the costs of the project excepting as they have been incurred?

A Except as I, as a business man, would go about it inquiring as to the costs.

Q Who is your engineer?

A Who is my engineer?

Q Yes.

A I have no engineer at the present time.

Q When did you last have an engineer?

A You mean on the works, employed on the works, Mr. Hawley?

Q Well, that is one thing I would like to know, yes.

A I had several of them during the legal procedure.

Q Well, when did you last have an engineer plan or project your work?

A Mr. Berg made the last report, and he made it for the city.

Q I am talking about you personally.

A Personally?

Q Yes.

A Mr. Hamming was my last engineer.

Q That was in 1914?

A 1914. I have not had an engineer since 1914 on the works, because it has been tied up in a law suit.

Q Have you planned for a power house and other development necessary to utilize the waters?

A Have I planned?

Q Yes.

A I had plans made out by Seattle engineers.

Q When?

A I believe that was in 1913.

Q You haven't had any plans since?

A No, sir.

Q Have you ever had accurate measures taken of the amount of water flowing and available for diverting?

A Accurate?

Q Yes.

A Well, we made measurements with floats and by cross-sectioning the stream.

Q When?

A In 1911 and 1912.

Q Who did that?

A My brother, R. T. Hazzard, and myself.

Q I suppose this shows in the testimony here?

A That is all in the testimony, yes, sir, in the record.

Q He was not a competent engineer?

A He was not a competent engineer?

Q Yes. I ask you that as a question.

A I think he could measure a stream.

Q He came right off of railroad work and off of soldiering duty to you, didn't he?

A To me?

Q Yes.

A He had been in the army, yes, sir.

Q In short, he hadn't been an engineer, a hydro-electric engineer, hadn't had any experience whatever in that, when he came to you in 1911?

A Well, his own statement would be the better record as to that. It is of record.

Q Have you at this time funds enough of your own to do any work on that project?

A Well, not to complete the works, no, sir.

Q How much have you available to do anything on the works?

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A Well, it wouldn't be a great deal at the present time, Mr. Hawley.

Q I don't want to embarrass you, but you are not in a position personally to do any considerable amount of work?

A No, sir.

Q Your hope then lies in having Twin Falls get the law amended, and pass a bond issue; that is the only thing like a definite commitment you have, for financing this enterprise?

A They hold an option on the proposition at the present time.

Q Which option is in evidence here?

A Which option is in evidence here.

Q And there is no definite commitment to finance this enterprise from any source whatever, is there?

A That is the most definite at present, yes, sir.

Q The Idaho Power Company, of course, has its lines in that territory, has it not?

A Yes, sir.

Q It is supplying now the very territory that you would seek to supply?

A Part of it. They are not supplying the farmers.

Q They have power lines available, though, for that purpose, from which they could take current if they desired?

A Yes, they have power lines through that part of the country.

Q They have ample power developed to care for all the needs of that country, so far as you know?

A Yes, sir.

Q What need, then, is there for your plant?

A The farmers have asked for it, and the Chamber of

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Commerce of the City of Twin Falls want an opportunity to go ahead and develop it.

COM'R SWENDSEN: I hardly see the connection, Mr. Hawley. I don't know why it is important to know whether there is a need for this power plant. The question here is whether due diligence has been pursued in construction.

MR. HAWLEY: Simply possibly a related question that goes to the possibilities of financing it, that is all. If there is no need for the enterprise, the probabilities are that sound business judgment would dictate that no investment of that magnitude, $600,000, should be saddled upon the community. That is the relation of the point, the only way it is relevant or competent for the hearing. It is a question, of course, I assume, but that was my idea in asking the question.

COM'R SWENDSEN: I assumed that it was for that purpose, but I don't see yet why that has a bearing on the question as to whether they are entitled to an extension.

MR. HAWLEY: Well, possibly it is only remote, as was some of the other.

COM'R SWENDSEN: I was seeking information, was all.

Q (Mr. Hawley) If an extension is not granted, your permit expires on what date?

A May 21, 1926.

Q And if it expires on that date that leaves the development of that stream, for whatever possibilities there may be, under the permits of Mrs. Syster?

A I presume so.

MR. HAWLEY: That is all.

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RE-DIRECT EXAMINATION

By Mr. Stephan:

Q Do you know about what the population of Twin Falls is at this time, Mr. Hazzard?

A Between eight and ten thousand, I should say.

Q Mr. Hazzard, what would you say as to the possibility of getting the necessary financing to finance the completion of the works if this permit of yours is to expire May 21, 1926, and no extension of time granted?

A Well, I couldn't finance it within that time.

Q Do you believe that it can be financed through your efforts and the efforts of those who are interested in the proposition, if an extension of time is granted?

A Yes, sir, I do; I really believe that.

Q And you base that conclusion now upon what?

MR. HAWLEY: Hasn't that already been gone into?

MR. STEPHAN: I think so.

COM'R SWENDSEN: I don't see that it has any bearing anyhow, gentlemen.

MR. STEPHAN: All right. I think that is all for Mr. Hazzard.

RE-CROSS EXAMINATION

By Mr. Hawley:

Q You own the land which controls this power site?

A Yes, sir.

Q And you own all the structures on it?

A Yes, sir.

Q If anyone else sought to develop the power of Clear Lakes on the scheme that you have outlined, they would have to acquire the land ~~thm~~ and the structures from you?

A Yes, sir; if they attempted to build a plant on my property, they certainly would.

Q The Hodgin administration, just previous to that of Mr. Ashton, opposed this proposition, did they not?

A I didn't understand so. I think they admitted that they should put the proposition up to the people; I think Mr. Hodgin himself said that.

Q He was opposed to it, was he not?

A I don't know how he personally was.

Q In any event, it wasn't put up to the people?

A No, it wasn't put up to the people.

Q When did you first put it up to him to put up to the people?

A It must have been some time in February, or March, about a year ago, that I first put it up to the Chamber of Commerce, and they asked us to put the proposition to the city.

Q Hodgin was mayor then?

A He was then Mayor, until April, I think, Mr. Ashton came in as mayor.

COM'R SWENDSEN: April of this year?

A No, last year.

WITNESS: (Speaking to Mayor Ashton) Weren't you installed?

MAYOR ASHTON: May.

Q (Mr. Hawley) There has been no attempt to put it up to the people at all, in any way?

A They have had a number of committees appointed to plan a proposition to put it up to the people, and their city attorneys have advised that they need some amendments to the law before they do that.

Q I suppose it is obvious it hasn't been --

A (Interrupting) They made an attempt in that way to find some way out, and they claim they need this legislation.

Q I assume that that is in the record through your affidavit, but the point is that the matter has not been put up to any popular vote?

A It hasn't been put up to a bond issue, no, sir.

MR. HAWLEY: That is all.

RE-DIRECT EXAMINATION

By Mr. Stephan:

Q The permit itself will expire, will it not, before it could have been submitted to popular vote, since this option contract has been entered into?

A Yes, sir.

MR. STEPHAN: That is all.

RE-CROSS EXAMINATION

By Mr. Hawley:

Q Why didn't you give an option before?

A I gave them an option when they asked me for the option. They were trying, on a partial proposition, or leasing proposition, to see what they could get that would be legal, and they finally determined, through a special committee, that what they wanted was an option, so I granted them an option.

Q That is the first thing in writing that has passed from you?

A In the way of a contract, yes, sir.

MR. HAWLEY: That is all.

MR. STEPHAN: That is all, Mr. Hazzard. I might call Mr. Herriott.

(Witness excused.)

GEORGE HERRIOTT, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Stephan:

Q Your name is George Herriott?

A Yes, sir.

Q And your business is practicing law?

A Yes.

Q And your residence is Twin Falls?

A Twin Falls.

Q Have you been connected with Mr. Hazzard in the handling of the legal end of the case of Syster vs. Hazzard and others?

A I have.

Q Mr. Herriott, since the final determination of that case in the Supreme Court do you know what has been done with regard to procuring financing in and around Twin Falls of the Clear Lake proposition?

A I think I know quite a bit about it.

Q I wish you would go ahead and state generally what has been done by the two administrations of the city of Twin Falls, the Hodgin administration, and also the Ashton administration.

A As Mr. Hazzard has related on the stand heretofore, he was invited to make a proposition to the Chamber of Commerce. That was done, and it was presented. I helped him do it. The Chamber of Commerce took action by recommending that it be presented to the city council, and there was such an invitation extended, and that was done. There were some people on the council who were opposed to it.

I remember Mr. Keel particularly. I don't know just how about the others, but they all submitted that this matter should be put up to a vote of the people. That being done, an instruction was given to draw the ordinance on this proposition, that enough bonds be voted to pay Mr. Hazzard the purchase price of that matter, some $43,000, and enough to finish the works of diversion, which, as I remember now, was $110,000. Mr. Andy Meyers was the city attorney at the time, and he thought I should draw the ordinance, and I did draw the ordinance for that, and submitted it to him, and I had a discussion with him, and he raised the point that he didn't believe that an ordinance which provided merely for the purchase of a power site would be good, unless enough money was voted to complete an entire plant, including diversion works, which would have taken something like $800,000; and then it was that the difficulties of the council came up, and these propositions came on, in which a committee was appointed, and they discussed the proposition of seeking legislation, and also the other proposition was put up, that the council would have no right to charge sufficient for the services of this utility to cover both the operating expenses, interest, and sinking charge fund, and that all we could do would be to charge enough for the service to cover operating expenses, the rule having been adopted in Twin Falls with regard to the water works. So that, under those circumstances, the committee thought it advisable to take steps with regard to legislation, and take an option. That, in short, is the way it was done.

Q State ~~them~~ to the Commissioner when that was done.

A I am very poor at dates, and I wouldn't be able to say just what time that was.

Q Was it done before May, 1925?

A Well, the submission to the Chamber of Commerce, I think, was in the Hodgin administration, and there was a discussion there, and I think they agreed, the same as the later council did, that the matter should be put up to the people, that it wasn't their personal views in regard to it, and I think both administrations took that view. Even Mr. Keel said to me himself that while he was opposed to the matter, he thought the people should have an opportunity to vote on this matter.

Q Anything more in that regard, Mr. Herriott?

A I don't think of anything just now.

Q You have spoken of a necessary expenditure of $800,000. Did that contemplate the construction of a proper distribution system?

A Either that or the purchase or taking up with the Power Company of some proposition of purchasing from them, if it could be purchased, their distribution system at Twin Falls. I think they figured, -- I don't know just how they arrived at that figure, -- that it would take about $400,000 for the distribution system, and the purchase of power and transmission lines and machinery, it would take somewhere near between three and four hundred thousand dollars, and that it would take somewhere between seven or eight hundred thousand dollars. But there was no question, there never has been any question in either council but that it was the duty to put this matter up to the people to pass upon the proposition, and they were personally willing to do so at any time, and the only reason it wasn't done was because the proponents of this Mutual Power proposed that we would lay until we get further legislation, and take an option.

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Q Mr. Herriott, if an extension of time is granted, say in the neighborhood of two years following May 21, 1926, do you believe that the matter of completing the works for diversion and installing a proper system for the conveyance of power to the users can be put over in that part of the country?

A I certainly do. I feel very strongly on that point. I have had a good deal of experience now in the last number of years with regard to this matter, and I never was as hopeful of it as I have been lately. And then many of the farmers have been in favor of this corporation. I will name some of them. Mr. Murphy, Mr. Ericson, Mr. Sanders, and a number of those gentlemen, have been to me expressing the fact that they knew they could go right out now, the way the situation was, and absolutely raise all the money necessary to put that through, so far as the farmers were concerned. Not only that, but there has been recently in Twin Falls a very eminent hydro electric engineer, who has said that this matter could be put over, and he has interested himself. He came very well recommended, and has intimated certain plans by which that could be done. He has been down to visit the works and has talked with me in regard to this situation. The standing of this man and the party who presented him gives me great confidence along that line.

MR. STEPHAN: I think that is all, Mr. Hawley.

CROSS EXAMINATION

By Mr. Hawley:

Q Who is the eminent engineer who made that statement?

A Mr. Craner.

Q What are his initials?

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A I don't know his first name.

Q Where is he from?

A From San Francisco.

Q What kind of an engineer is he?

A He is reputed to be a very eminent engineer, having been a great many years with the Allis-Chalmers people, in establishing plants for them.

Q Has he built hydro-electric plants?

A Yes.

Q Where?

A I don't know. I am only speaking now from the party who represented him to me, and I have great confidence in him.

Q You never checked up on Mr. Craner, to know with whom he is connected?

A No.

Q Or anything about his antecedents?

A No.

Q Has he finances to build the project himself?

A Not himself, no, sir. He represents capital, so I have been informed.

Q You haven't any assurances from him of finance?

A No.

Q For this project?

A Oh, no.

Q Have you any assurances of financial assistance of any type or kind for the completion of this permit, either the construction of the diversion works or the subsequent beneficial user works?

A You mean by that, Mr. Hawley, in writing, in the matter of a contract?

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Q Yes.

A No, we have no contract.

Q You haven't anything that is enforceable?

A Oh, no.

Q What is your interest in this situation?

A As attorney for Mr. Hazzard. I expect to get a fee.

Q You have a large amount of money coming to you if it is successful?

A Well, I don't know as it would be a very large amount. I expect to get a good fee out of it if the matter goes through and the plant is sold, yes, sir.

Q I assume that you have been with Mr. Hazzard throughout his efforts to get this plant built?

A Yes, I have been interested in this matter in this way, as his attorney, ever since this litigation started.

Q How long have you been attempting to get municipal aid?

A I personally haven't made any great efforts, so far as that is concerned, me personally.

Q How long has effort been made to get municipal assistance?

A Well, I think it was in -- prior to May, anyway, prior to Mr. Ashton's administration, in the latter part of the Hodgin administration.

Q Was that the first effort that was made to get any municipality to finance this project?

A Any municipality?

Q Yes.

A Well, I don't remember now. There have been so many things in regard to that, that I don't remember.

Q What do you mean by "so many things"?

A Oh, we have been taking this up with a great many people. So far as I am concerned, we have talked with the council of Boise about it, here. We came down here at their invitation at one time. We were here and put it up to them. They asked us to come down, and the whole council and the mayor were having a special session here, and we talked with them a great deal about it.

Q When?

A Well, now, let me see. I think that, I am sure, was prior to the time that we presented it to the Chamber of Commerce.

Q And how about the town of Buhl?

A Well, I know that I never had anything to do with putting it up to the town of Buhl, that is, with any of their officers, or anything of that kind. There might have been some desultory conversation, or something of that kind.

Q How about Mr. Hazzard putting it up to the city government of Buhl?

A I don't know anything about that. It must have been before my time, if he did.

Q Did you have anything to do with getting legislation passed which gave municipalities the right to build their own plants or acquire them?

A Not individually, I didn't. I was not down here during that part of the legislation at all.

Q Were you and Mr. Hazzard interested in that?

A Well, I was his attorney and acting for him at the time that legislation was passed.

Q You and Mr. Hazzard were instrumental in presenting that to the legislature, or having it presented?

A Not me. I don't know what Mr. Hazzard did. I wasn't here at any time during the session. I prepared no bill, nor proposed any bill.

Q The financing that has been attempted is just the financing that Mr. Hazzard testified to, and no other?

A Yes, as I remember it.

Q You don't know of any outside financing that has been attempted?

A No.

Q I assume, just as Mr. Hazzard testifies, you have no assurance whatever that the legislation will be passed which is necessary?

A Certainly not.

Q You, of course, have no way of knowing the vote?

A Certainly not.

Q You merely hope that the legislation will be passed, and that the people will vote the bond issue?

A Yes, sir.

Q And if either falls down, the project falls down?

A No, not necessarily; I wouldn't say that at all.

Q Why not?

A I think the farmers will finance it. I think they are ready now to subscribe to a capital stock for this corporation, being prepared.

Q How long have they been so ready?

A Oh, I have talked during the last month or such a matter, and they are ready, knowing that the city has to -- are ready to take it over if the city does not come through.

Q You have no proposition in writing, or anything definite or binding, from them?

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A No, but I have a great deal of confidence in the men back of it.

Q As well as hope?

A Yes, as well as hope. They are men of substance.

Q The same men who signed this stockholders subscription list?

A A few of them, yes.

MR. HAWLEY: That is all.

RE-DIRECT EXAMINATION

By Mr. Stephan:

Q Mr. Herriott, what would you say as to the possibility of the farmers generally in and around Twin Falls supporting or voting against candidates for the coming session of the legislature who would favor amending the law so as to so amend the present law as to make it possible for a municipality to buy on the plan that has already been detailed here?

A I think they will be elected by a very great majority. In fact I will say that any man who is opposed to municipal ownership of power down there couldn't be elected on the council another year.

Q You are confining that to the council. What would you say as to candidates being successful in the election who opposed amending the present law?

A I don't believe that any candidate for the legislature in our district can be elected to the legislature unless he is pledged to support the law.

COM'R SWENDSEN: What is the purpose of this inquiry? Does that relate in any way to the due diligence of the permit holder, or his good faith in this matter?

MR. STEPHAN: No, it does not, Your Honor. It only goes to show this, the sentiment of the people down there with regard to supporting this sort of proposition, if they are given the opportunity to support it.

COM'R SWENDSEN: I doubt very much whether, under this sort of hearing, under this statute, we have a right to consider a question of that kind.

MR. STEPHAN: Very well.

COM'R SWENDSEN: I think we are limited to whether there has been a showing of good faith.

MR. HAWLEY: I haven't objected to it, but I assumed that it wasn't a matter of any materiality anyway.

COM'R SWENDSEN: Well, I so regarded it, and I just made that remark to shorten it up.

MR. STEPHAN: That is all.

COM'R SWENDSEN: Anything further?

MR. STEPHAN: Nothing with Mr. Herriott.

COM'R SWENDSEN: Have you any further witnesses, Mr. Stephan?

MR. STEPHAN: I don't believe so, unless Mr. Herriott or Mr. Hazzard think of something more.

MR. HAWLEY: You are not going to put an engineer on?

MR. STEPHAN: We would be glad to have Mr. Berg go on, but the Commissioner has indicated that so far as the feasibility of diversion of water under permits 13262 and 3 is concerned, he didn't care to hear anything along that line, nor regarding costs.

COM'R SWENDSEN: Of the works under those two permits?

MR. STEPHAN: Yes.

COM'R SWENDSEN: I don't think it is pertinent at all.

MR. STEPHAN: I might inquire then of the Commissioner, if it is not improper: Would you be interested in having any testimony regarding the possible construction, the completion of the construction of the works necessary for diversion, under 10415?

COM'R SWENDSEN: Well, I should think that would perhaps have a quite decided bearing on the question as to whether you have acted in good faith. Certainly there is a relation between the total required expenditure and the amount that has been expended, in connection with the showing of good faith and diligence. That is up to you, however, whether you care to put it in. I should think it might have a bearing.

MR. STEPHAN: Well, I think then we should call Mr. Berg. I think we will have him take the stand.

- - - - - - - - - -

E. V. BERG, a witness heretofore duly sworn, upon being recalled, testified as follows:

MR. STEPHAN: Mr. Commissioner, Mr. Hazzard informs me this, that Mr. Berg's testimony as to the probable cost is in the transcript that has been admitted in evidence here, volumes one and two, of the case of Syster vs. Hazzard.

COM'R SWENDSEN: I should think it would be quite unnecessary to duplicate it, if that is true. It need not be done for my purposes.

MR. STEPHAN: Might we have a stipulation, then, that so far as the purposes of this hearing are concerned, Mr. Hawley, that the Commissioner may consider the testimony of Mr. Berg as it appears, and other engineers on behalf of Mr. Hazzard, so far as it appears of record in that transcript?

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MR. HAWLEY: I think the whole record is before the Commissioner, of witnesses for both sides.

COM'R SWENDSEN: I understood that was agreed to this morning.

MR. HERRIOTT: Then there is nothing for Mr. Berg to testify about.

MR. HAWLEY: There isn't anything additional to add to the testimony of Mr. Berg then, on that point, I assume?

MR. STEPHAN: I wouldn't know anything.

MR. HAWLEY: I might ask Mr. Herriott whether he has anything to add to the statements made by his client and associate, Mr. Hazzard, about plans, engineers, and engineering data.

MR. HERRIOTT: You mean in addition to what is in the record?

MR. HAWLEY: Yes, and in addition to what Mr. Hazzard testified to here today.

MR. HERRIOTT: No, I think not.

MR. HAWLEY: Your testimony on that would be as his testimony; at least it wouldn't go any further than his testimony?

MR. HERRIOTT: Yes.

COM'R SWENDSEN: Any other witnesses?

MR. STEPHAN: I think that is all, Mr. Commissioner.

COM'R SWENDSEN: Mr. Hawley, have you anything to present?

MR. HAWLEY: That is all. We haven't anything.

MR. STEPHAN: Now, if there is no offer of testimony here on the part of the contestant, we would move

at this time that the objections to the granting of the extension which were filed this morning on behalf of Mrs. Syster be stricken from the record and be not considered in this case, for the reason that it appears on its face to be an attack wholly and solely upon the statute, House Bill 54, Chapter 28, of the 1925 Session Laws, and raising entirely the question of the constitutionality of that statute, and I take it that it is the duty of the Commissioner of this department to act upon the assumption that the statute in question is constitutional, until the Supreme Court of the state has determined otherwise.

MR. HAWLEY: Well, we are, of course, presenting objections to the granting of the extension, based upon the grounds that any extension would be a violation of the rights of Mrs. Syster, and also would be an injury and detriment to the permits which are held by her, and we assume that the testimony in the case discloses the dates of her permit, the time within which she must complete one-fifth of the work, and an extension of this type would destroy her right to have the priority confined to the existing conditions of 10415. And we orally object that the showing is not sufficient, -- in fact, I intended to make a motion, and will make a motion along those lines, -- to justify the extension. Our objection, of course, isn't only a constitutional objection. We are not only raising the point that any extension would be in derogation of her constitutional rights and privileges, but as well that the petitioner in the case has not shown any reasons, under the statute itself, entitling him to an extension.

Now, at this time, we move to dismiss the application, upon the grounds, first, that the evidence fails to disclose that the owner of the permit has proceeded with due diligence to the construction of the balance of the works necessary for the diversion; that it fails to be satisfactory evidence of his good faith; that it fails to show a necessity for any extension of time; and that the evidence affirmatively discloses that the applicant has had practically five years within which to complete his works of diversion, and has not during that period been able to finance its completion; that he has not shown at this time any present ability to finance; that he has not shown due diligence in attempting to get proper finance for the completion of the works from any responsible financial sources; that the evidence affirmatively shows that he is interested solely in saving the investment that he has made, which investment is still intact, and must be used by anyone else who attempts to duplicate the appropriation; that the evidence also discloses that to grant an extension of time would interfere with the rights of the contestant, and would be an unjustifiable extension of the priority dates of the petitioner under his permit. In addition, we repeat the allegations made in the affidavit of objections which we have heretofore filed.

COM'R SWENDSEN: As to the motion to withdraw or strike from the record the objections filed by the protestant, being its Exhibit No. 1, the motion will be denied. The exhibit will be permitted to remain in the record, and will be considered for what it is worth, after analysis of the legal effect of the instrument is had.

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The motion of the protestant is denied, since, as was explained in the beginning, the investigation by the administrative officer is not complete when the hearing is concluded, and for other reasons.

MR. STEPHAN: Since we have heard the statement of counsel for the ~~px~~ contestant, it rather reinforces what we believed to be a proper position this morning, as announced here, that so far as the rights of the contestant were concerned, under permits 13362 and 3, that if there is any actual conflict between any real interest of the contestant and the holder of permit No. 10415, that it must be by reason of the rights which she has under permits 13362 and 3, and we stand ready and willing, and have throughout this procedure, to show that the rights of Mrs. Syster under those permits are only speculative, and from only a casual observation of her claims of right it would appear that they were entirely visionary and speculative, and have no merit in fact.

We will ask that the foregoing statement be incorporated as a part of the record and be considered as a part of the record, before our motion to dismiss the objections to the granting of the extension.

MR. HAWLEY: No objection to that.

MR. STEPHAN: Very well.

MR. HAWLEY: Now, Mr. Commissioner, in the event that you consider it necessary or helpful to you to have testimony upon the financial ability of Mrs. Syster to carry on and complete the works of diversion and apply the waters covered by her permits to beneficial use, we want an opportunity, any time that you will give us a little notice,

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to show that to you, because we are amply able to prove that we can complete the project,and are able so to do financially, embraced in our permits, that is, one or the other of the permits, because they are duplicates, so far as water is concerned, although it might be possible that we would want to use both of them. I don't say definitely yet which one we would proceed under. And so far as the practicability, the engineering, and economic feasibility and practicality of the diversion and beneficial use contemplated under these permits is concerned, we are ready to prove that from an economic and from an engineering standpoint these proposed diversions are proper, feasible, and successful projects, and, in short, are the only real meritorious engineering and economic developments possible of Clear Lakes andClear Lake waters. We have foregone the introduction of any testimony here because we have assumed and taken for granted that the validity of our permits is established. They have never been successfully attacked. And we also assumed that in view of the fact that we have a very considerable period still remaining until one-fifth of the work is completed, that we are not subject to attack on the grounds that the work hasn't been completed. We can't very well start work and carry it to completion if 10415 is developed. There isn't room for both the permits, and if 10415 is developed, that practically destroys the further use of the waters of Clear Lakes and Clear Lakes Creek, and puts a half use on that particular natural resource, because permit 10415 does not contemplate the full utilization of the power possibilities of Clear Lakes and Clear Lakes creek. We are, of course, taken by surprise, I might add, at any attack upon the permits that we hold here,

and are not prepared at the present moment to go into any questions involving their economic, engineering, or financial possibilities.

COM'R SWENDSEN: Since I have heretofore indicated that the question of the validity or feasibility of the development under those permits is not, in my opinion, pertinent to this issue, obviously I shant call on you for such information.

Is there anything further?

MR. STEPHAN: I think not.

COM'R SWENDSEN: Then we will merely suspend the hearing for the time being, subject to future call, with the understanding, of course, that fair notice will be given to all parties, if further hearing is had, if there are further matters to be heard.

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STOCKHOLDERS OF

THE FARMERS MUTUAL POWER CO.

BUHL, IDAHO.

We, the undersigned, and each of us, for an in consideration of the mutual promises of each other, and other valuable considerations, do, and each does hereby subscribe for the number of shares set opposite our respective names in a corporation to be hereafter formed under the laws of the State of Idaho, having a capital stock of $500,000, divided into 5000 shares of the par value of $100.00 each, to be called the Farmers MUTUAL LIGHT, HEAT & POWER COMPANY, to be organized for the purpose of furnishing to its shareholders electric light, heat and power without profit to said corporation, and we, and each of us, for the consideration aforesaid do hereby agree to pay fifteen percent of the amount of our respective subscriptions to said corporation, when the same is incorporated, and the balance on November 1, 1919, upon issuance of certificate or certificates of the stock subscribed herein.

NAME	NUMBER OF SHARES	AMOUNT
Leon S. Ayoth	10	1000.00
John Paget	10	1000.00
J. H. Dunaway	10	1000.00
Ross Prescott	10	1000.00
C. H. Lautz	10	1000.00
M. Homling	10	1000.00
C. S. Broyles	5	500.00
A. A. Glodowski	5	500.00
Chas Harmon	5	500.00
W. A. Ambrose	5	500.00
C. H. Hardesty	10	1000.00
R. N. Reed	5	500.00
C. J. Swansan	5	500.00
Adolph Johnson	5	500.00
S. C. Orr	5	500.00
Chas Pierce	5	500.00
		11500.00

NAME	NO OF SHARES	AMOUNT
		11500.
Peter Ericson	10	1000.00
S. G. Hill	10	1000.00
H. Murphy	10	1000.00
D. N. Englebright	10	1000.00
J. S. Lorain	10	1000.00
Alfalfa Mills	10	1000.00
Kimberly Milling Co.	10	1000.00
Times Printing Co.	10	1000.00
Crom Bldg.	10	1000.00
J. H. Walker	10	1000.00
F. S. Nicholson	10	1000.00
L. B. Branson	10	1000.00
George C. Leth	10	1000.00
E. H. Pember	5	500.00
Albert Tschannen	5	500.00
Oscar Noh	5	500.00
Frank Barron	5	500.00
Wm. Noh	10	1000.00
Joe Adams	3	300.00
James Nejezshleba	1	100.00
I. L. Ward	10	1000.00
J. W. Chapman	1	100.00
John Prilucik	5	500.00
C. T. Skiff	1	100.00
Vantoy Low	5	500.00
John Massey	5	500.00
E. J. Spike	5	500.00
John Abble	1	100.00
Rudolf Martehs	10	1000.00
Theo Kluender	10	1000.00
Ralph Rendla	10	1000.00
John Ross	10	1000.00
		35200.00

NAME	NUMBER OF SHARES	AMOUNT
		35200
Albert Liesons ? (Liermann)	10	1000.00
J. D. Ohrens	10	1000.00
L. C. Nfeyer	10	1000.00
Henry N. Lutz	10	1000.00
Wm Liesmenn Liermann	10	1000.00
L. U. Sckaeder	10	1000.00
B. F. Phelby	10	1000.00
John G. Lutz	15	1500.00
W. B. Hagler	10	1000.00
O. W. Christian	10	1000.00
J. H. Renike	15	1500.00
Henry Werner	15	1500.00
J. L. Krieger	10	1000.00
R. L. Nagels	10	1000.00
W. U. Sperey	10	1000.00
Fredd B. Hagler	10	1000.00
Edward Bosch	10	1000.00
Jens Larssen	10	1000.00
Louis Ulrick	10	1000.00
F. D. Wagener	15	1000.00
Henry Jasper	13	1300.00
L. D. Roe	10	1000.00
August Werner	10	1000.00
H. A. Ohbnsdlen	10	1000.00
H. Hielfiker	10	1000.00
Carl Liermann	10	1000.00
Emil Liermann	10	1000.00
Wm P. Lutz	10	1000.00
D. M. Denton	10	1000.00
J. F. Nipper	10	1000.00
S. G. Potter	10	1000.00
		68000 ab

NAME	NUMBER OF SHARES	AMOUNT
		68000.00
John Beeghley	10	1000.00
H. F. Becker	10	1000.00
Arnold Tanneler	10	1000.00
Norton Converse	10	1000.00
Ralph Smalley	10	1000.00
E. A. Littler	10	1000.00
A. Osborn	10	1000.00
Wm H. Werner	10	1000.00
Ward V. Sonner	10	1000.00
Karl Reding	10	1000.00
Charles F. Smalley	10	1000.00
H. O. Schroeder	10	1000.00
Geo. Hobson	10	1000.00
S. A. Scully	10	1000.00
J. H. Grieve	10	1000.00

$83000.00

State of Idaho,)
County of Twin Falls, : SS.
City of Twin Falls.)

John Wolfenden, being duly sworn, deposes and says: That he is a certified accountant and resides in the City of Twin Falls, Idaho; that he is now and has been ever since its incorporation, the secretary of the FARMERS MUTUAL LIGHT, HEAT AND POWER COMPANY, a corporation under the laws of the State of Idaho, and has had at all times and now has custody of the record and files of said corporation, at its principal place of business in the County of Twin Falls, Idaho.

That the above and foregoing paper is a true copy of the list of subscribers to the capital stock of said corporation on file in the office of said corporation.

John Wolfenden

Subscribed and sworn to before me this 15th day of March, 1926.

George Herriott

Notary Public.

State of Idaho,)
: SS.
County of Twin Falls.)

L. A. Warner, being duly sworn, deposes and says: That for many years he has dealt in commercial paper in the County of Twin Falls, Idaho, and was acquainted with the financial standing of the persons hereinafter named, who were subscribers to the capital stock of the Farmers Mutual Light, Heat and Power Company, and, in his opinion, the persons hereinafter named were financially responsible for the amount of their several subscriptions at the time they were made in the Summer of 1919.

Leon A. Ayeth, J. H. Dunaway, M. Homling, Charles Harmon, C. J. Swanson, Peter Erickson, L. G. Hill, Times Printing Company, George C. Leth, E. H. Pember, Albert Tschannen, Oscar Noh, Frank Barron, Wm. Noh, C. T. Skiff, Vantoy Low, John Massey, E. J. Spike, John Abble, Rudolph Martens, Ralph Rendla, J. D. Ohrens, Henry N. Lutz, B. F. Phelby, John G. Lutz, J. L. Kreiger, R. L. Jagels, W. U. Spary, F. D. Wagener, D. M. Denton, J. F. Nipper, Arnold Tanneler, Norton Converse, E. A. Littler, A. Osborn, Ward V. Sonner, Geo. Hobson, S. A. Scully, J. H. Grieve.

Subscribed and sworn to before me this 16th day of March, 1926.

Notary Public.

State of Idaho,)
: SS.
Countyoof Twin Falls.)

Glenn F. Fritcher, being duly sworn, deposes and says: That he was for many years the Assistant Cashier of the Citizens State Bank of Buhl, Idaho, and was such Assistant Cashier during the year 1919, and was acquainted with the financial standing of the persons hereinafter named, who were subscribers to the capital stock of the Farmers Mutual Light, Heat & Power Company, and, in his opinion, the persons hereinafter named were financially responsible for the amount of their several subscriptions at the time they were made in the Summer of 1919.

C. H. Hardesty, R. N. Reed, Adolph Johnson, S. C. Orr, Joe Adams, I. L. Ward, Albert Lierman, Wm. Lierman, W. B. Hagler, J. H. Renike, Henry Werner, W. P. Lutz, S. G. Potter,.

Glenn F. Fritcher

Subscribed and sworn to before me this 15th, day of March, 1926.

George Arrett

Notary Public.

State of Idaho,)
: SS.
County of Twin Falls.)

Peter Erickson, being duly sworn, deposes and says: That he is now and has been for many years last past a resident of Twin Falls County, Idaho, and was acquainted with the persons hereinafter named and acquainted with ther financial resources and standing during the Summer of 1919, at the time they severally subscribed to the capital stock of the Farmers Mutual Light, Heat and Power Company, and in his opinion they were financially responsible for the amounts of respective subscriptions.

John Paget, A. A. Glodowski, Chas. Pierce, H. Murphy, D. N. Englebright, J. S. Lorain, Kimberly Milling Company, J. A. Crom, of the Crom Building, J. H. Walker, F. S. Nicholson, L. B. Branson, Jens Larsen, Ralph Smalley, Karl Reding, Charles F. Smalley.

Peter Erickson

Subscribed and sworn to before me this 16th day of March, 1926.

George Arrott

Notary Public.

State of Idaho,)
: SS.
County of Twin Falls.)

Peter Erickson, being duly sworn, deposes and says: That he is now and has been for many years last past a residen of Twin Falls County, Idaho, and was acquainted with the persons hereinafter named and acquainted with ther financial resources and standing during the Summer of 1919, at the time they severally subscribed to the capital stock of the Farmers Mutual Light, Heat and Power Company, and in his opinion they were financially responsible for the amounts of respective subscriptions.

John Paget, A. A. Glodowski, Chas. Pierce, H. Murphy, D. N. Englebright, J. S. Lorain, Kimberly Milling Company, J. A. Crom, of the Crom Building, J. H. Walker, F. S. Nicholson, L. B. Branson, Jens Larsen, Ralph Smalley, Karl Reding, Charles F. Smalley.

Peter Erickson

Subscribed and sworn to before me this 16th day of March, 1926.

George Arnott

Notary Public.

C O N T R A C T.

This agreement made and entered into in duplicate this 4th day of October A.D.1919, by and between William C.Hazzard, and Louise Hazzard, his wife, of the County of Gooding, State of Idaho, the parties of the first part, and the Farmers Mutual Power Company, a corporation organized and existing under the laws of the State of Idaho, the party of the second part, WITNESSETH:

That the said parties of the first part, for the consideration hereinafter named, do hereby agree to sell to the said party of the second part, and the said party of the second part in consideration of the promises and agreement hereinafter made, on the part of the parties of the first part, do hereby agree to purchase from the said party of the first part, the following described property located in Gooding County, State of Idaho, and particularly bounded and described as follows, to-wit:

All that part of Lot Seven (7) west of Clear Lake and Clear Creek in Section Two (2), Township Nine (9), South, Range Fourteen (14), East of the Boise Meridian, reserving, however, to Otis E.Syster and Mary E.Syster, his wife, for themselves, and their assigns, a personal right over a strip of lake shore line extending back fifteen (15) feet from the water's edge of Clear Lake for the landing of boats and fishing privileges for themselves and guests; also reserving to said Otis E. and Mary E. Syster a personal right-of-way twenty (20) feet wide across a portion of said lot seven (7) as a roadway, as the same is described in a reservation in certain deed from Otis E.Syster, and Mary E.Syster, his wife, to William C.Hazzard and Charles D.Marsh, which deed is dated September 20th, 1909, and is recorded in the office of the Recorder of Lincoln County, Idaho.

Also all that part of Lot Two (2), Section Eleven (11), Township Nine (9), South, Range Fourteen (14), East of the Boise

Meridian, which lies east of a straight line projected south to Snake River from the Southwest corner of Lot Seven (7), in Section Two (2), Township Nine (9), South, Range Fourteen (14), East of the Boise Meridian, which is the quarter corner on the south line of said Section Two (2).

Also all the right, title and interest of said parties of the first part in and to that part of said Section Two (2) being a strip of the bed and shoreland lying along the bed and east bank of Clear Creek extending back Thirty (30) feet from the water's edge of said Creek, and extending in a northerly direction from the old roadway across the natural bridge to Clear Lake as described in a quit-claim deed and as outlined in red on the survey map which is attached to said deed, both of which instruments are signed by Otis E.Syster and Mary E.Syster, his wife, and duly recorded in Book 23, of Deeds, at Page 327, in the records of Lincoln County, Idaho, to which reference is hereby made the conveyance by first parties to be made by quit-claim deed, together with all power rights, headworks, diversion works, canal, forebay, all rights-of-way appurtenant thereto or located on said premises and all water filings and franchises, including all water rights in Permits Nos. 7056 and 10415, both of which are of record in the office of the State Engineer of the State of Idaho.

Also a strip of land described as follows: Commencing at the northwest corner of Lot Seven (7) in Section Two (2), Township Nine (9), South, Range Fourteen (14), east of the Boise Meridian;running thence north along the east line of the Northeast Quarter (NE¼) of the Southwest Quarter (SW¼) of said Section Two (2) to the county road, a distance of about twelve hundred (1200) feet; thence west along the said county road a distance of sixty (60) feet; thence south, parallel with the east line of the said Northeast Quarter (NE¼) of the Southwest Quarter

and sixty feet distant therefrom to a point opposite a point on the west line of said Lot Seven (7) which is sixty (60) feet south of the Northwest corner of said Lot Seven (7); thence east to the west line of said Lot Seven (7); thence north to the northwest corner of said Lot Seven (7) and the place of beginning, reserving, however, to the said parties of the first part a right-of-way along and over said strip of land upon which to construct and maintain a pipe line or conduit to convey water for irrigation and domestic purposes to the lands of first parties to the south and west of said strip of land, and also reserving to the said parties of the first part the right to change in such a manner as they may see fit the channel of the stream which flows from Hopkins' Springs and Lava Springs across said strip of land, which springs furnish the water for irrigation and domestic purposes for the lands of parties of the first part lying to the west and south of said strip of land, and also reserving the right to cross said strip of land with such irrigation ditches and other conduits of the said parties of the first part, their heirs and assigns, as may be necessary or convenient to convey said water across said strip, and further reserving to the said parties of the first part the right to use said strip of land for a road to the lands of said first parties, all of which shall be at the expense of the parties of the first part, and shall not interfere with or impair the use of said roadway by the party of the second part, or its assigns. Provided, however, that the said party of the second part, its successors or assigns, shall never construct or maintain any retaining wall or dam or other barrier upon said strip of land which will interfere with the flow of said stream of water from said Hopkins' and Lava Springs as the channel of said stream or streams are now located or as they may be hereafter changed by the said parties of the first part.

Also to be conveyed to party of second part all power-rights or manufacturing rights in the water filing made by Henry T.

Smith to all water flowing from Lava Springs, and filed August 23, 1893, by instrument recorded in Book 1, Page 143 of Water Rights, records of Lincoln County, Idaho, except the water rights not to exceed one cubic foot per second for domestic and irrigation and agricultural purposes named therein, which water for said irrigation, agricultural and domestic purposes is hereby reserved to the parties of the first part herein.

Also is hereby reserved to the said parties of the first part herein, their heirs and assigns 4.5 cubic feet of water per second for irrigation and domestic purposes, or either thereof, out of said Water Permit Nos. 7056 and 10415. Said water for irrigation and domestic uses before mentioned to be taken out of the forebay through a water gate, or gates, located in the north forebay wall, and to be conducted across said Lot Seven (7); and said parties of the first part reserve to themselves, their heirs and assigns, right-of-way or easements not to exceed ten (10) feet in width over said Lot Seven (7) which are to be located and selected by said first parties for the purpose of conducting said water across said Lot Seven (7), provided said right-of-way or easements are so located as not to interfere with the construction and development of the headworks, diversion works or power plant, or plants, of the party of the second part, as hereinafter mentioned and provided.

Also to be conveyed to party of the second part the steam engine and hoist, large derrick and fixtures, including cables, all steel beams, lumber and trash racks, chain block, block and tackle, shovels, pick, hammers, and all other tools located in the blacksmith shop, cooking range and table in the cook house, and any and all other materials located on said premises.

The terms of this agreement are as follows:

1. The said party of the second part shall pay to the said parties of the first part the sum of Forty Three Thousand ($43,000.00) Dollars for the property heretofore described at

the times, in the amounts and in the manner hereinafter set forth, when that certain action now pending in the District Court of the Fourth Judicial District of the State of Idaho, in and for Good ng County, entitled Mary E.Syster, plaintiff, vs. William C. Hazzard, et al., defendants, has been finally terminated in favor of the said William C. Hazzard, or the said parties of the first part are in a position to give a good and merchantable title to said property; provided, however, that the parties of the first part shall be in a position to give a good and merchantable title to said property within two (2) years from the date of this contract. It being understood and agreed between the parties hereto that if the said parties of the first part are not in a position to give a good and merchantable title within two (2) years from the date of this contract, that then and in that event, this contract shall be null and void, and no obligation shall rest upon first parties to convey said property.

It is understood and agreed that the said party of the second part shall have the right, if it so desires, to intervene in the above entitled action with the consent of the court, in behalf of the said parties of the first part, and in protection of ~~the~~ its interest under this contract; provided, however, that such intervention shall be at no cost or expense to the said parties of the first part. It being further understood and agreed between the parties hereto that the parties of the first part are to use their utmost endeavors to press said litigation through their attorneys, at their expense, to a final conclusion.

2. It is understood and agreed between the parties hereto, that when the suit hereinbefore mentioned has been terminated by a decision in the Supreme Court of the State of Idaho, or otherwise, in favor of the said parties of the first part, then the said parties of the first part shall furnish to the said party of the second part an abstract of title to the property hereinabove described, and the said party of the second part shall within ten (10) days from the time said Abstract of Title is

furnished, accept said title as a good and merchantable title, or present its objections in writing to all of the matters not satisfactory to the said party of the second part, in which objections it shall be clearly and specifically stated the grounds of said objections, and when said objections have been served upon the parties of the first part, they shall have thirty (30) days within which to cure any defects that are acknowledged by them, and at the end of said thirty (30) days, or when the said parties of the first part have determined that the objections so raised are not well taken, and there is a dispute between the said parties hereto as to the condition of said title, then the said parties of the first part shall select an attorney, and the said party of the second part shall select an attorney, and two attorneys so selected, shall select a third attorney, and the three attorneys, so elected, shall act as a board of arbitration and decide upon the condition of the title, and each of the parties hereto shall have the privilege of arguing before the board all points raised in regard to the title, and present such matters to the board as they shall see fit upon said subject, and said board shall present its findings in writing in regard to the condition of the title, and if such findings are in favor of the parties of the first part, and shall hold the title as being a good and merchantable title, then the said party of the second part shall pay to the said parties of the first part, upon receiving conveyance of said property, the sum of Forty-three Thousand ($43,000.00) Dollars, of which Twenty-five Thousand ($25,000.00) Dollars shall be paid within thirty (30) days from the date of said findings, or acceptance of title, and the balance within ninety days from the date of said findings, or acceptance of title, to be paid at any bank in the City of Twin Falls, Idaho, together with interest on all unpaid purchase price from the date of such findings, or acceptance of title, until final payment is made at the rate of five per cent. (5%) per annum, or at the option of the party of

the second part execute its bonds for the remainder of said Forty-three Thousand ($43,000.00) Dollars, that is to say, for the sum of Eighteen Thousand ($18,000.00) Dollars, payable two (2) years from date of said findings or acceptance of title, with interest at Seven per cent. per annum, payable annually. And it is further understood and agreed that each of the parties hereto shall stand one-half (½) of the expense of such Board of Arbitration.

It is understood that the only title Syster and wife had to that part of Section Two (2), Township Nine (9), South, Range Fourteen (14), E.B.M. and lying outside of said Lot Seven (7), and lying along the bed and east shore line of Clear Creek, and between the old roadway across the Natural Bridge and Clear Lake, as shown upon the plat attached to deed recorded in Book 23 of Deeds, page 327, in Lincoln County records, is a squatter's right, and such right is the only right which will be conveyed by quit-claim deed by first parties to second party, and such squatter's right is subject to a reservation made by the United States Government for power purposes, and it is understood and agreed that the said party of the second part herein shall take such property subject to the reservations and requirements in favor of said Syster and wife mentioned and described in the deed above mentioned as recorded in said Book 23 of Deeds.

It is understood and agreed between the parties hereto, that in the event that said plaintiff in the suit aforesaid, shall not appeal said case from the District Court to the Supreme Court of the State of Idaho, within the time prescribed by statute, or if said suit shall be otherwise finally terminated, that then the said parties of the first part shall be in a position to present their title at once to the said party of the second part.

3. It is agreed that the said party of the second part shall have the right to go upon the property above mentioned an proceed with the works of diversion mentioned and described in the permits of the State Engineer of the State of Idaho numbe 7056 and 10415, such work to be done in accordance with the and specifications of said permits; provided, however, that

such work shall be done at the risk and expense of the said party of the second part, and without cost or expense to the said parties of the first part.

4. It is agreed that the bonds hereinbefore mentioned shall be in such denominations as the said first parties shall elect; that each of said bonds shall be payable on or before two (2) years from their date to William C. Hazzard, or order, at the First National Bank of Twin Falls, in the City of Twin Falls, Idaho, and bear interest at the rate of seven (7) per cent. per annum, from date until paid, interest payable annually, and the payment of said bonds shall be secured by a first and purchase money mortgage or deed of trust upon the property above described, and the aggregate sum of said bonds shall not exceed Eighteen Thousand ($18,000.00) Dollars in principal, and said first mortgage or trust deed shall not secure any other indebtedness than that of the balance of the purchase price in the principal sum of Eighteen Thousand Dollars. Said bonds and said mortgage or trust deed shall provide that if the interest, or principal, is not paid when due, or any part thereof, or if any of the covenants or any covenant to be performed by the said party of the second part under said bonds or mortgage or trust deed is in default, then the said parties of the first part, or the holder or holders of a majority of the principal of said bonds shall have the right to declare the whole sum of both principal and accrued interest upon all unpaid bonds to be immediately due and payable and foreclose the same. It is further agreed that the said bonds and mortgage, or trust deed, shall provide that in the event suit or action is instituted to collect said or any of said bonds, or any part thereof, the said party of the second part shall pay a reasonable sum as an attorney's fee in said suit or action.

5. Time is the essence of this contract, and in the event that either of the parties hereto, shall fail to perform any covenant to be performed by them or it hereunder, promptly when due, then the other party to said contract may rescind the same.

6. The covenant obligations, rights and privileges of the respective parties hereto, shall extend to and bind their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals and the said party of the second part has caused its corporate name to be hereunto subscribed, and its corporate seal to be hereto affixed by its proper officers, duly authorized, the day and year first above mentioned.

FARMERS MUTUAL POWER COMPANY

By Peter Grieson
President

ATTEST: John Vogenden
Secretary

William C. Hazzard (SEAL)

Louise Hazzard (SEAL)

STATE OF IDAHO,
County of ..... } ss. .....

came before me personally, and being duly sworn, deposes and says that....he is ..... in the above entitled action; that ....he has read the foregoing .....; that the same is true of ..... own knowledge, except as to those matters therein stated on ..... information and belief, and as to those matters that ..... believes it to be true.

.....

Subscribed and sworn to before me, this ..... day of ....., A. D. 191....

.....
Notary Public, State of Idaho, residing within Twin Falls County, Idaho.

STATE OF IDAHO,
County of ..... } ss. .....

being first duly sworn, says that he is attorney for the ..... in this action; that said ..... is not within the County of .....
wherein resides this affiant, and for that reason this verification is made by the affiant, and that the foregoing pleading is true to the best of affiant's knowledge, information and belief.

.....

Subscribed and sworn to before me, this ..... day of ....., A. D. 191....

.....
Notary Public, State of Idaho, residing within Twin Falls County, Idaho.

STATE OF IDAHO,
County of ..... } ss. .....

being first duly sworn on oath, deposes and says that he is the ..... of the ..... corporation, and makes this verification in its behalf; that the foregoing ..... is true of his own knowledge, except as to those matters therein stated on his information and belief, and as to those matters that he believes it to be true.

.....

Subscribed and sworn to before me, this ..... day of ....., A. D. 191....

.....
Notary Public, State of Idaho, residing within Twin Falls County, Idaho.

No.....

STATE OF IDAHO
DISTRICT COURT
TWIN FALLS COUNTY

.....

.....

Plaintiff

vs.

.....

.....

Defendant

Due and personal service of the within is hereby admitted this ..... day of

....., 191..., at .....

.....

.....

Attorney for .....

Filed this ..... day of

....., A. D. 91....

.....

Clerk District Court.

By .....

Deputy.

TURNER K. HACKMAN
Attorney for

.....

Residence and Office
TWIN FALLS, IDAHO

KINGSBURY PRESS TWIN FALLS, IDAHO

OPTION TO PURCHASE.

THIS AGREEMENT, Made and entered into this sixth day of February 1926, between William C. Hazzard and Louise Hazzard, husband and wife, of Gooding County, State of Idaho, the parties of the first part, and the CITY OF TWIN FALLS, in the County of Twin Falls, State of Idaho, a municipal corporation under the laws of the State of Idaho, the party of the second part, WITNESSETH:

That the said parties of the first part, for the consideration hereinafter set forth and the mutual covenants between the parties hereto, do hereby grant unto the said party of the second part an option to purchase the property hereinafter described at any time on or before the first day of July, 1927, for the sum of forty three thousand dollars, lawful money of the United States, or bonds of said city, taken at par, bearing interest at the rate of six per cent per annum, interest payable annually.

1. The property upon which this option is given is located in the County of Gooding, in the State of Idaho, and is particularly described as follows, to-wit:

All that part of lot seven (7) west of Clear Lake and Clear Creek in section two (2), township nine (9) south, range fourteen (14) east of the Boise Meridian, reserving, however, to Otis E. Syster and Mary E. Syster, his wife, for themselves and their assigns, a personal right over a strip of lake shore line extending back fifteen (15) feet from the waters edge of Clear Lake for the landing of boats and fishing privileges for themselves and guests; also reserving to said Otis E. Syster and Mary E. Syster a personal right of way twenty (20) feet wide across a portion of said lot seven (7) as a road way, as the same is described in a reservation in a certain deed from Otis E. Syster and Mary E. Syster, his wife, to William C. Hazzard and Charles D. Marsh, which deed is dated September 20th, 1909, and is recorded in the office of

the Recorder of Lincoln County, Idaho, in Book 13 of Deeds at page 251.

Also all that part of lot two (2), section eleven (11), township nine (9) south, range fourteen (14) east of the Boise Meridian, which lies east of a straight line projected south to Snake River from the southwest corner of lot seven (7) in section two (2), township nine (9) south, range fourteen (14) east of the Boise Meridian, which is the quarter corner on the south line of said section two (2).

Also all that part of lot six (6) in section eleven (11), township nine (9) south, range fourteen (14) east of the Boise Meridian which lies west of the thread of Clear Creek and east of a straight line projected south to Snake River from the southwest corner of lot seven (7), in section (2), said township and range, which is the quarter corner on the south line of said section two (2).

Also all that part of lot nine (9), section two (2), township nine (9) south, range fourteen (14) east of the Boise Meridian, which lies west of the present east bank of Clear Creek.

Also all that part of section two (2), township nine (9) south, range fourteen (14) east of the Boise Meridian, being a strip of the bed and shore land lying along the bed and east bank of Clear Creek and extending back thirty (30) feet from the water's edge of said creek, and extending in a northerly direction from the old road way across the Natural Bridge to Clear Lake as described in a quitclaim deed and outlined in red on the survey map which is attached to said deed, both of which instruments, deed and map, are signed by Otis E. Syster and Mary E. Syster, his wife, and duly recorded in Book 23 of Deeds, at page 327, in the records of Lincoln County, Idaho, the covenants and reservationa in favor of the grantors in said deed to be accepted and performed by the said party of the second part herein.

Also all power rights, headworks, diversion works, canal, forebay, all rights of way appurtenant to or located on said premises and all water filings and franchises, including all water rights in permit

number 10415, which is of record in the office of the Department of Reclamation of the State of Idaho, except as to reservations hereinafter specified for domestic and irrigation water for first parties.

Also a right of way for roadway upon and over a strip of land described as follows: Commencing at the northwest corner of lot seven (7) in section two (2), township nine (9) south, range fourteen (14) east of the Boise Meridian; running thence north along the east line of the northeast quarter (NE_4) of the southwest quarter (SW_4) of said section two (2), to the County Road, a distance of about twelve hundred (1200) feet; thence west along the said County Road a distance of thirty (30) feet; thence south, parallel with the east line of said northeast quarter (NE_4) of the southwest quarter (SW_4) and thirty (30) feet distant therefrom to a point opposite a point on the west line of said lot seven (7) which is thirty (30) feet south of the northwest corner of said lot seven (7); thence east to the west line of said lot seven (7); thence north to the northwest corner of said lot seven and the place of beginning, reserving, however, to the said parties of the first part a right-of-way along and over said strip of land upon which to construct and maintain a pipe line or conduit to convey water for irrigation and domestic purposes to the lands of first parties to the south and west of said strip of land, and also reserving to the said parties of the first part the right to change in such manner as they see fit the channel of the stream which flows from Hopkins Springs and Lava Springs across said strip of land, which springs furnish the water for irrigation and domestic purposes for the lands of parties of the first part lying to the south and west of said strip of land, and also reserving the right to cross said strip of land with such irrigation ditches and other conduits of the said parties of the first part, their heirs and assigns, as may be necessary or convenient to convey said water across said strip, and further reserving to said parties of the

first part, their heirs and assigns, the right to use said strip of land for a road to the lands of said first parties, all of which will be at the expense of the said parties of the first part for such conduits, and which shall not interfere with or impair the use of said roadway by the said party of the second part.

Provided, however, that the said party of the second part, or its successors, shall never construct or maintain any retaining wall or dam or other barrier upon said strip of land which will interfere with the flow of said stream of water from said Hopkins and Lava Springs as the channel of said stream or streams are now located or as they may be hereafter changed by the said parties of the first part, their heirs or assigns.

Also all power or manufacturing rights in the water filings made by Henry T. Smith to all water flowing from Lava Springs, and filed August 23, 1893, by instrument recorded in Book 1, page 143 of water rights, records of Lincoln County, Idaho, except the water rights, not to exceed one cubic foot per second, for domestic and irrigation and agricultural purposes named therein which said water for said irrigation, agricultural and domestic purposes is hereby reserved to the said parties of the first part herein.

All water which flows from Hopkins Springs is hereby reserved to the said parties of the first part for domestic, irrigation and other purposes.

Also is hereby reserved to the said parties of the first part herein, their heirs and assigns, three (3) cubic feet of water per second for irrigation and domestic purposes, or either thereof, out of said permit number 10415. Said water for irrigation and domestic uses so reserved to be taken out of the forebay through a water gate, or gates, located in the north forebay wall and to be conducted across said lot seven (7), and the said parties of the first part reserve to

themselves, their heirs and assigns, rights of way or easements not to exceed ten feet in width over said lot seven (7), which are to be located and selected by said first parties, their heirs and assigns, for the purpose of conducting said water across said lot seven, provided said rights of way or easements are so located as not to interfere with the construction and development of the headworks, diversion works or power plant, or plants, of the said party of the second part.

Also is included with the real estate above described certain personal property described as, donkey engine, a large derrick and fixtures, including cables, all steel beams and trash racks, now located upon the above described premises.

2. The consideration for this option is the following covenant made by the said party of the second part to and with the said parties of the first part, to-wit:

The said party of the second part does hereby covenant to and with the said parties of the first part that it will use its best endeavor to procure from the Commissioner of Reclamation of the State of Idaho an extension of time for a period of two years for the completion of works and making proof of such completion under permit number 10415 hereinbefore mentioned and described, as provided under the terms of Chapter 28 of the 1925 Session Laws of the State of Idaho, page 40.

And in the event the said party of the second part shall fail to procure such extension of time on or before May first, 1926, then this option shall cease and terminate.

3. This option shall not be assigned by the said party of the second part, without the written consent of the said parties of the first part first obtained.

4. In the event the said party of the second part shall procure such extension of time within the time and in the manner hereinbefore provided, then the said party of the second part shall give written

notice to said parties of the first part, on or before May first, 1927, of its intention to submit to the voters of said city the question of purchase of said property under said option, or, a like notice of the rejection of such proposal of purchase by the Mayor and Council, without submitting such proposal to a vote of the electors.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals this sixth day of February, 1926, and the said party of the second part has caused its corporate name to be hereunto subscribed and its corporate seal to be hereto affixed by the Mayor of said city and the Clerk thereof, after being duly authorized so to do by a Resolution of said city duly and regularly passed by the Council of said city and approved by the Mayor thereof, this sixth day of February 1926.

William C. Hazzard (Seal)

Louise Hazzard (Seal)

Parties of the first part.

CITY OF TWIN FALLS.

By E. L. Ashton

Mayor.

ATTEST: James L. Mee

Clerk.

Parties of the second part.

State of Idaho,)
County of Twin Falls,) ss

On this sixth day of February, A.D. 1926, before me, George Herriott, a Notary Public for the State of Idaho, residing at Twin Falls, in Twin Falls County, said state, personally appeared William C. Hazzard and Louise Hazzard, his wife, known to me to be the persons whose names are subscribed to the within and foregoing instrument, and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary
(Seal)
My commission expires
February 17th, 1928.

George Herriott.
Notary Public for Idaho, residing at Twin Falls, Idaho.

CERTIFICATE

State of Idaho
County of Twin Falls } ss.

I, James L. Mee, City Clerk of the City of Twin Falls, State of Idaho, do hereby certify that I have compared the papers in writing, to which this certificate is attached, with the original option to purchase given by William C. Hazzard and Louise Hazzard to the CITY OF TWIN FALLS, covering the so-called Clear Lakes Power Site

as the same appear of record and on file in my said office, at the City Clerk's Office of the said City of Twin Falls, in the said City of Twin Falls, and that the same is a true and correct copy of said Original, and the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said City of Twin Falls, at Twin Falls, Idaho, this 17th day of March, 1926

James L. Mee
City Clerk of the City of Twin Falls, Idaho.

Ex. J.

WHEREAS, under and by virtue of the terms of paragraph 1 on pages 4 and 5 of a certain contract in writing between William C. Hazzard and Louise Hazzard, his wife, as parties of the first part, and the FARMERS MUTUAL POWER COMPANY, and Idaho corporation, the party of the second part, dated October 8th, 1919, the right and obligation of said second party to purchase from said first parties of certain water fights and real estate depended upon the favorable termination in the Supreme Court of Idaho in favor of said first parties of a certain action then pending in the District Court of the Fourth Judicial District of the State of Idaho, in and for Gooding, or when said first parties were in a position to give a good and merchantable title to said property, if sooner settled, provided that said action was terminated or said first parties were in a position to give good title within two years from date, and

WHEREAS, said suit was not terminated and said first parties were not in a position to give a good title to said property within the said two years, and the parties to said agreement, for a valuable consideration, extended said time to January 8th, 1922, by an amended and supplemental agreement in writing, executed by them, amending only that part of said agreement relative to the time of the privilege and obligation to purchase contained in said paragraph 1, and

WHEREAS, said action has not been terminated and the said parties were not in a position to give a good and merchantable title to said property on or before January 8th, 1922, and

WHEREAS, it is the desire and purpose of the parties to said agreement of October 8th, 1919, to further extend the time of the privilege and obligation to purchase said property,

NOW THEREFORE, for and in consideration of the premises and the sum of one dollar in lawful money of the United States of America to each of the parties hereto in hand paid by the other, ~~xhaxxparagraphxx~~ it is hereby agreed by and between the parties hereto that paragraph 1 on pages 4 and 5 of said contract of October 8th, 1919, shall be amended to read as follows, to-wit:

"1. The said party of the second part shall pay to the said parties of the first part the sum of forty three thousand ($43,000.00) dollars for the property heretofore described at the times, in the amounts and in the manner hereinafter set forth, when that certain action now pending in the District Court of the Fourth Judicial District of the State of Idaho, in and for Gooding County, entitled Mary E. Syster, plaintiff vs. William C. Hazzard et al, defendants, has been determined by the Supreme Court of the State of Idaho, and the said parties of the first part are in a position to give a good and merchantable title to said property prior thereto, and if the said action is determined against the said William C. Hazzard in the said Supreme Court, then this contract shall be void.

"It is understood and agreed that the said party of the second part shall have the right, if it so desires, to intervene in the above entitled action with the consent of the court, in behalf of the said parties

of the first part, and in protection of its interest under this contract; provided, however, that such intervention shall be at no cost or expense to the sa parties of the first part. It being further understoo and agreed between the parties hereto that the parties of the first part are to use their utmost endeavors to press said litigation through their attorneys, at their expense, to a final conclusion."

It is further understood and agreed, that except for the amendment of said patagraph 1, as hereinbefore set forth, said contract of October 8th, 1919, shall be and remain in all respects as written and executed.

It is further understood and agreed that this contract of amendment shall not be in force or take effect until the same is properly executed by all of the parties hereto.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals this sixteenth day of January, 1922, and the said party of the second part has caused its corporate name to be hereunto subscribed and its corporate seal to be hereto affixed by its proper officers, dulay authorized, this 20th day of March 1922.

William C. Hazzard (Seal)

Louise Hazzard (Seal)

FARMERS MUTUAL POWER COMPANY,

By A L Hurst

President.

ATTEST: John Wolfenden

Secretary.

WHEREAS, under and by virtue of the terms of paragraph 1 on pages 4 and 5 of a certain contract ~~between~~ in writing between William C. Hazzard and Louise Hazzard, his wife, as parties of the first part, and the FARMERS MUTUAL POWER COMPANY, an Idaho corporation, the party of the second part, dated October 8th, 1919, the right of second party to purchase from said first parties certain water power rights and real estate therein described will expire on October 8th, 1921, or within two years from the date of said contract, and

WHEREAS, the said party of the second part desires an extension of such time from October 8th, 1921, to January 8th, 1922, and first parties are willing to give said second party the said extension of three months, provided no other change is made in said contract, now, therefore,

It is hereby agreed between the parties hereto that the following words, to-wit, "Provided, however,, that the parties of the first part shall be in a position to give a good and merchantable title to said property within two (2) years from the date of this contract" contained in said paragraph 1 of said contract and commencing in the eighth line from the top of page 5 of said contract, shall be so amended as to read as follows, to-wit: "Provided, however, that the parties of the first part shall be in a position to give ~~me~~ a good and merchantable title to said property on or before January eighth, 1922".

It is further agreed between the parties hereto that the words, to-wit, "It being understood and agreed between the parties hereto that if the said parties of the first part are not in a position to give a good and merchantable title within two (2) years from the date of this contract, that then and in that event, this contract shall be null and void and no obligation shall rest upon first parties to convey said property", contained in said paragraph 1 of said contract shall be so amended as to read as follows, to-wit: "It being understood and agreed betweenthe parties hereto that if the said parties of the first part are not in a position to give a good and merchantable title on or before January eighth, 1922, that then and in that event, this contract shall be null and void and no obligation shall rest upon first parties to convey said property"

It is understood between the parties hereto that the only change being made in said contract of October 8th, 1919, is to extend the time mentioned in said paragraph 1 ~~from~~ for three months from October 8th, 1921, or until January 8th, 1922.

It is understood and agreed that this contract shall not be in force until properly executed by all of the parties hereto.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals the 4th day of October, 1921, and the said party of the second part has caused its corporate name to be hereunto subscribed and its corporate seal to be hereto affixed by its proper officers, duly authorized, this day of October, 1921.

William C. Hazzard (Seal)

Louise Hazzard (Seal)

FARMERS MUTUAL POWER COMPANY,

By A Z Hurst President

Attest: Secretary

BEFORE THE COMMISSIONER OF RECLAMATION OF THE STATE OF IDAHO.

IN THE MATTER OF THE APPLICATION OF WILLIAM C. HAZZARD FOR AN EXTENSION OF TIME TO COMPLETE WORKS OF DIVERSION UNDER PERMIT 10415, AS PROVIDED UNDER CHAPTER 28 OF THE 1925 SESSION LAWS OF IDAHO, PAGE 40.

AFFIDAVIT OF WILLIAM C. HAZZARD.

State of Idaho,)
: SS.
County of Twin Falls.)

William C. Hazzard, being duly sworn, deposes and says: That he is the owner of permit No. 10415, issued by the State Engineer of the State of Idaho, to appropriate the waters of Clear Lake and Clear Creek in Section 2, Township 9 south, range 14 east of the Boise Meridian in Gooding County, Idaho.

That under said permit work was done which cost approximately twenty five thousand dollars and which was sufficient in extent at the time when done to construct one-half of the works required under the specifications of said permit, and which work was done and money expended prior to January 8th, 1917,- the time at which one-fifth of the work was required to be done under said permit (See permit and see decision of the Supreme Court of Idaho in the case of Syster v. Hazzard, 39 Idaho, page 580)

That on December 18, 1917, Mary E. Syster made application to the Reclamation Department of the State of Idaho for permits 13362 and 13363 to appropriate the water of said Clear Lake and Clear Creek. That in truth and in fact, Mary E. Syster was only the nominal applicant for said permits, and the real applicant was the Idaho Power Company. (See folios 678 to 690 605-608, 661-665 = 1886-1887, 1677-1699, 1772-1781, 1846-1847 1864-1866, 1971-1974 of the Transcript on Appeal in the Syster-2055-2056 Hazzard case). That the purpose of the Idaho Power Company

in applying for these permits was to acquire"post dated" permits with which to contest affiant's permit No. 10415 under Article 2 Chapter 218, Idaho Compiled Statutes, Sections 5584 et seq. That said permits 13362 and 13363 were duly issued by the Department of Reclamation and a contest was brought in the name of the said Mary E. Syster on behalf of said Idaho Power Company against said permit 10415, which was decided against her in said Department, and later, decided against her in the District Court for Gooding County, and, finally, decided against her in the Supreme Court of Idaho, and Remittitur of the Supreme Court was filed in the Clerk's office of the said District Court at Gooding, Idaho, on November 1, 1924. That when said contest was brought this affiant obtained an order extending the time within which to complete the works of diversion under said permit 10415, which provided that the time consumed by such litigation and up to the time the said Remittitur was filed in the lower court, should not be counted against said permit holder, and that under the order of said Department such permit holder has until May 21, 1926, within which to complete said works.

That on October 18, 1919, affiant entered into a written contract with the Farmers Mutual Light, Heat and Power Company, (a corporation organized under the laws of the State of Idaho for the purpose of purchasing the power site and power rights under said permit 10415) for the sale of said property upon a favorable termination of the litigation above mentioned.

That prior to the making of said contract a subcription list to the capital stock of said corporation, then to be formed, was circulated among the farmers of the Twin Falls Tract, and within a few days the amount of eighty three thousand dollars was subscribed by persons who were financially able to pay the several amount of their subscriptions. It then being ascertained to the satisfaction of the persons in charge of

such list, from the reception accorded them upon the subject of this proposed purchase within the short time they were making the solicitation, that the farmers would readily and almost unanimously subscribe to any reasonable sum which might be necessary to accomplish the purchase of said property and the construction of a power plant, the persons in charge ceased the solicitation of further funds until the litigation was terminated, they having enough subscribed to purchase the site and water fights and finish the works of diversion.

That prior to the formation of the corporation above named, another mutual corporation had been formed by business and professional men of Twin Falls, Idaho, under the name of the Mutual Light, Heat and Power Company. This last named corporation was also formed to take over the power site and water rights under said permit 10415, and the formation of such corporation and its objects and purposes were creating such a favorable public interest that it elicited the active, secret opposition of the Idaho Power Company, the power trust occupying this field, and for the purpose of destroying the public interest in the proposed new development and to excite in the minds of the public a suspicion as to the validity of the title to said power site and water rights under said permit 10415, the said Idaho Power Company caused to be brought the said suit in the name of Mary E. Syster, who owns adjoining land, against affiant. The name of Mary E, Syster was used in said litigation to cover up and keep secret the interest and purposes of the said Idaho Power Company. Said action was instigated and caused to be brought by the said Power Company to hinder, delay and adversely affect the subscription to the capital stock of said Mutual Light, Heat and Power Company. The effect of this suit and the activities of the said Idaho Power Company to prevent subscriptions to the capital stock of said corporation were successful until the farmers with the knowledge of

said suit subscribed promptly and enthusiastically and within a few days to the capital stock of the new corporation to be formed by the farmers of a sufficient amount to purchase said power site and water fights under said permit 10415 and to finish the works of diversion in accordance with the specifications of said permit, and later said corporation, when formed, did enter into the said contract to purchase said property, to be consumated if and when said litigated should be terminated in favor of this affiant.

That the litigation in the case of Syster v. Hazzard was commenced in December, 1917, and was terminated in favor of affiant by the Supreme Court of Idaho and its remittitur sent down to the lower court and filed on November 1, 1924, hence such litigation lasted for a period of over six years and ten months. When the farmers formed their corporation and subscribed to its capital stock and entered into the contract forthe purchase of said power site and water rights, they were enjoying a period of great prosperity and money was very plentiful among them, due to the great demand and high prices of farm products created by the war and the conditions immediately following the war. That at the termination of the litigation aforesaid on November 1, 1924, most of the farmers of the Twin Falls Tract were either insolvent or greatly reduced in circumstances, and there were practically none who were out of debt or who were doing other than struggling to make ends meet and to preserve their homes and property, and not one who could pay his subscription without great distress. That affiant, if he had been so ~~it~~ disposed, might have brought suit for a specific performance of his contract and might have obtained judgment against a certain few of said subscribers which would have been collectible, but any amount which he might have collected in that manner would have been insufficient to do the work necessary to complete the same under the specifications of said permit,

and, further, any money which might have been collected in this manner could not have been collected in time to have been used for this purpose before the time would have expired for such completion, due to the congested condition of the courts owing to the number of cases being litigated during such depression. Owing to the conditions above set forth it became the moral duty of affiant to relieve the subscribers to such capital stock of their obligations under said contract and it also came to the point where it was good business policy in the judgment of affiant to favor the farmers in this regard and keep their friendship and good will and await the time when they could get on their feet again, and such action was taken and they were relieved from such obligations.

Upon the release of said contract affiant was invited by the Chamber of Commerce of the City of Twin Falls, Idaho, to present to it a proposition looking to the purchase of said site and water rights under said permit No. 10415 and the construction of a power plant to serve the said City of Twin Falls and its inhabitants. Such presentation was made to said Chamber and action taken thereon by recommending that the matter be presented to the City Council of said City of Twin Falls, and in conformity therewith, an invitation was extended to affiant to present the matter to the said Council, which was done. The council thereupon directed its City Engineer, Mr. E. V. Berg, to make a detailed investigation and report to the said Council, preparatory to submitting the question of such purchase to a vote of the electors of said city. In compliance with the directions of said Council the City Engineer visited the City of Tacoma, Washington and other towns and cities in Oregon and Washington having municipally owned power plants and reported to the Council the result of his investigations and reported favorabley upon the proposal of the City to construct a municipally owned plant. However,

when the matter of drawing an ordinance for the submission of the proposition to the electors of the City was placed with the City Attorney, certain legal difficulties were raised by him, to-wit: 1. That under the present law a power plant could not be paid for out of the earnings of the utility itself, that is to say, he held that the City could not charge enough for its power service to cover the interest and sinking fund charges on bonds, in addition to operating expenses, but that the City could charge enough only for its service to cover the cost of operation, and held that under the present law that property would have to be directly taxed for interest and sinking fund charges. 2. That it would be necessary for the City under the present law to vote bonds sufficient to cover the cost of a complete plant, including a full distribution plant in the City, which would require an exorbitantly large issue of bonds, which were not necessary at the inception of the enterprise. Whether these legal objections were well taken or not, there was enough doubt raised to cause the friends of the proposal to refuse to risk a vote of the electors under such a handicap, and cause them to take steps to delay the matter until legislation could be procured in the legislature of 1927 which would give relief, Hence such proponents of the proposal, acting through a committee appointed by the Mayor of said City, advised that an option be taken upon affiant's power site and water rights under said permit 10415 for such a length of time as would allow time to procure such legislation and to complete the works of diversion, and further advised that the City take steps to procure from the Commissioner of Reclamation an extension of time for a period of two years from May 21, 1926, within which to complete said works, as provided under Chapter 28 of the 1925 Session Laws of Idaho, page 40, application for which extension has been ~~granted~~

made by said affiant.

That the farmers of the Twin Falls Tract during the past few months, through the Grange and other farmer organizations have expressed their views upon the necessity of the farmers acquiring electrical power and recommending that effort be made to secure power sites which are now available for their use before the same are acquired by the present power monopoly. Such farmers are feeling the necessity of acquiring power in order that they may equip their homes with electric light and that their wives and daughters may have the convenience of electric cooking to save them from the heat, discomforts and drudgery of stove cooking during the period of the summer months when many men are employed and to enable them to have hot and running water and all the accompanying conveniences, and to enable the farmer to pump his water, grind his feed, milk his cows and run certain of his machinery. That the Idaho Power Company, the present monopoly in the field, has refused to furnish the farmer, generally, with this utility, and in the few cases where it has furnished the same to farmers the charge for the service and the distribution equipment has been exorbitant. The farmers of the Twin Falls Tract have had two prosperous years and have the promise of continued prosperity for several years to come and they have again reached the point where they are ready to co-operate and proceed to form a new mutual corporation, or use the one already formed, and construct a power plant which will be run upon a nonprofit, mutual basis and which will give them cheap power. The leaders of the old corporation have lately expressed to affiant their determination to again raise subscriptions to this enterprise and be prepared to purchase from affiant the power site and water rights under said permit 10415 and construct a plant thereon, provided the said City of Twin Falls shall fail, by reason of

its inability to obtain the legislation desired, or for any other reason, to avail itself of said option to purchase.

That the only persons interested in the waters of Clear Lake and Clear Creek, other than affiant, are, Mary E. Syster, (nominally only) and the Idaho Power Company, the latter's interest being that of an obstructionist only to oppose the construction of any power plant under permit 10415. Its monopoly of the power situation in this part of the country would be greatly affected by the building of a plant at this point, whereby it would be shown to the people of this section that its charges for service were exorbitant. The suit of Syster v. Hazzard was caused to be brought by it (See folios 678-690, 605-608, 662-665, 1886-1887, 1677-1699-1772-1781,-1846-1847, 1864-1866, 1971-1974, 2055-2056 of Transcript on Appeal in Syster v. Hazzard) and was not caused to be brought to effect an equitable right or remedy, and said post dated permits Nos. 13362 and 13363 were not procured in good faith and with the intention of constructing a power plant thereunder, but were procured for the purpose only of obstructing and defeating the construction of a power plant under said permit No. 10415, and to furnish the basis of a suit by which it could use its great resources as a powerful corporation to slander the title to affiant's property and to harrass and annoy him in every way it could over a period of over six years and with the intent to defeat the construction of the plant under affiant's permit 10415, and by its action it has been successful in destroying the means and sources by which affiant would have been able to finance and complete said works of diversion under said permit 10415, except for such suit. The proof of the above assertion is shown upon the face of said permits 13362 and 13363 and the facts shown by the record in the said case of Syster v. Hazzard as set forth in the Transcript upon appeal in said case and by the natural conditions which are known and admitted to exist at the points of diversion of said last named permits and which are observable from the

photograph herein.

It can be seen from the picture and the said permits 13362 and 13363 that the Idaho Power Company contends that it would build a cement wall on the lower side of a canal 14 feet in width at the bottom, founded in a loose rock formation, 1900 feet long with which to catch and impound and gather the waters of the springs which furnish the waters of Clear Lake, at a point where there is no evidence of any water at all. The points of diversion of said last mentioned permits are about 90 to 100 feet above the point where any waters issue as springs. The place where said points of diversion are located in said permits 13362 and 13363 and where the said canal is proposed to be located is a loose mass of lava rock and boulders, so that no canal could be constructed at such place which would hold or divert water, if there was any water at such place to ~~xxx~~ divert. The Idaho Power Company contends in its said permits that it would build such cement canal 1900 feet in ~~xxxxx~~ length, fourteen feet wide on the bottom and twelve feet in depth and carry the water in a pipe line nearly four thousand feet in length and nine feet in diameter at a cost of fifty thousand dollars, in 1918, when materials and labor were at the highest. The said Idaho Power Company knew when its engineers made the ~~xxx~~ survey and plans for said alleged permits and its attorneys prepared the data for said permits, and all of its ~~officexx~~ and agents knew that such works could not be built for ten times the amount of its estimates; knew that there was no water at the points of diversion of said permits; knew that no canal could be constructed at the places mentioned which would hold or divert water, if there was any to divert. In fact it is shown upon the face of said permits and by the conditions at and surrounding the alleged points of diversion and of said alleged canal, that the applications for said permits were false and fraudulent and made for the purpose only of obstructing and defeating the

construction of a power plant under said permit 10415

William C. Hazzard

Subscribed and sworn to before me this 20th day of March, 1926.

George Arnott

Notary Public for Idaho, residing at
Twin Falls, Idaho.

Mr. Inman telephoned that he had been notified that the District Court at Gooding had dismissed the appeal of the City of Buhl against the Idaho Power Company License No. 10415 on Clear Lake. He further stated that he moved checked the matter at Gooding and obtained a copy of the Order of Dismissal and will send you a copy of same for our files.

He also stated that it was his understanding that the Power Company's appeal in the matter of Permit No. 18554 had been dismissed sometime ago.

10115

RESOLUTION

A RESOLUTION OF THE CITY OF BUHL, IDAHO, TO DISMISS WITH PREJUDICE ACTION NO. 3320 IN THE GOODING COUNTY COURTS, ENTITLED CITY OF BUHL, PLAINTIFFS VS. IDAHO POWER COMPANY, ET. AL. DEFENDANTS, AND TO WITHDRAW FROM THE DEPARTMENT OF RECLAMATION PERMIT NO 18554 (ISSUED PURSUANT TO APPLICATION NO. 25707) ISSUED BY THE DEPARTMENT OF RECLAMATION FOR THE APPROPRIATION OF WATER, AND PROVIDING THAT G. R. DIBBLE, CITY ATTORNEY AND J. W. TAYLOR, ATTORNEY OF RECORD FOR THE CITY, BE DIRECTED TO CARRY OUT THIS RESOLUTION.

WHEREAS, The City of Buhl, Idaho is a party to that certain action now pending in the District Court of Gooding County, Idaho, entitled City of Buhl, Plaintiff, vs. Idaho Power Et. Al., Defendants Case No. 3320; and

WHEREAS, Said City is the holder of Permit No. 18554 (Issued Pursuant to Application 25707), issued by the Department of Reclamation of the State of Idaho; and

WHEREAS, Said matters and litigation involve an old controversy concerning the waters of Clear Lake, which are now used by Idaho Power Company in its power plant at said location and said matters have been pending since, 1939, and are a source of cost and expense to the City, and the Mayor and City Council of the City of Buhl, Idaho, are of the opinion that said matters and controversies should be dismissed, provided that all costs and expenses in connection therewith are paid by Idaho Power Company, without further obligation or expense to the City,

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BUHL, IDAHO:

That said appeal and action, Case No. 3320, in the District Court of Gooding County be dismissed with prejudice, costs to be paid by the defendant, Idaho Power Company, and that said Permit No. 18554 in the office of the Department of Reclamation of the State of Idaho, be withdrawn and cancelled, and that G. R. Dibble, and J. W. Taylor, the former being City Attorney, and the Latter being attorney of record for the City in this case, be and they are hereby directed to take all necessary action to carry out the purposes of this resolution.

PASSED BY THE CITY COUNCIL THIS 14TH DAY OF JUNE, 1949.

APPROVED BY THE MAYOR THIS 14TH DAY OF JUNE, 1949.

ATTEST:

/s/ Bernard D. Starr
City Clerk

/s/ Fred A. Kallusky
Mayor

(SEAL)

IN THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR GOODING COUNTY

CITY OF BUHL, a municipal corporation,

Plaintiff,

vs.

IDAHO POWER COMPANY, a corporation, and JAMES SPOFFORD, Commissioner of Reclamation of the State of Idaho.

Defendants.

CASE NO 3320

STIPULATION AND ORDER FOR DISMISSAL

It is hereby stipulated and agreed by and between the parties to the above-entitled proceeding, to-wit: CITY OF BUHL, a municipal corporation, plaintiff and appellant, by its City Attorney, G R Dibble, and its Attorney of Record, J W Taylor, pursuant to a resolution adopted by the Mayor and City Council of said City of Buhl on the 14th day of June, 1949, certified copy of which said resolution is attached hereto and filed herewith; IDAHO POWER COMPANY, a corporation, by its Attorney, A C Inman, and MARK R KULP, State Reclamation Engineer of the State of Idaho (successor in office and interest to James Spofford, Commissioner of Reclamation of the State of Idaho), defendants, that the above entitled action and appeal, Case No 3320, may, by the Court, be dismissed, with prejudice, any and all costs charged, and hereafter to be charged, to be paid by said defendant Idaho Power Company.

Dated this 15th day of June, 1949.

CITY OF BUHL, Plaintiff and Appellant

By (Sgd) G R Dibble
City Attorney.

(Sgd) J W Taylor
Attorney of Record.

IDAHO POWER COMPANY

By (Sgd) A C Inman
Attorney.

(Sgd) Mark R Kulp
MARK R KULP,
State Reclamation Engineer,
State of Idaho.

O R D E R

Upon the above and foregoing stipulation of the parties to the above-entitled proceeding, and it appearing to the Court that the above-named Mark R Kulp, State Reclamation Engineer of the State of Idaho, is the successor in office and interest to James Spofford, Commissioner of Reclamation of the State of Idaho, and one of the defendants named in said proceeding, and the Court being fully advised, it is hereby

ORDERED that the above-entitled action and proceeding, and the petition and appeal of the said City of Buhl, a municipal corporation, the plaintiff named therein, said action and proceeding being Case No 3320, be and the same is hereby dismissed with prejudice, any and all costs charged, and hereafter to be charged, to be paid by the defendant Idaho Power Company.

Done in Open Court this 22nd day of June, 1949.

BY THE COURT:

(Sgd) E H Sutphen
Judge.

RESOLUTION

A RESOLUTION OF THE CITY OF BUHL, IDAHO, TO DISMISS WITH PREJUDICE ACTION NO. 3320 IN THE GOODING COUNTY COURTS, ENTITLED CITY OF BUHL, PLAINTIFFS VS. IDAHO POWER COMPANY, ET. AL. DEFENDANTS, AND TO WITHDRAW FROM THE DEPARTMENT OF RECLAMATION PERMIT NO 18554 (ISSUED PURSUANT TO APPLICATION NO. 25707) ISSUED BY THE DEPARTMENT OF RECLAMATION FOR THE APPROPRIATION OF WATER, AND PROVIDING THAT G. R. DIBBLE, CITY ATTORNEY AND J. W. TAYLOR, ATTORNEY OF RECORD FOR THE CITY, BE DIRECTED TO CARRY OUT THIS RESOLUTION.

WHEREAS, The City of Buhl, Idaho is a party to that certain action now pending in the District Court of Gooding County, Idaho, entitled City of Buhl, Plaintiff, vs. Idaho Power Et. Al., Defendants Case No. 3320; and

WHEREAS, Said City is the holder of Permit No. 18554 (Issued Pursuant to Application 25707), issued by the Department of Reclamation of the State of Idaho; and

WHEREAS, Said matters and litigation involve an old controversy concerning the waters of Clear Lake, which are now used by Idaho Power Company in its power plant at said location and said matters have been pending since, 1939, and are a source of cost and expense to the City, and the Mayor and City Council of the City of Buhl, Idaho, are of the opinion that said matters and controversies should be dismissed, provided that all costs and expenses in connection therewith are paid by Idaho Power Company, without further obligation or expense to the City,

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BUHL, IDAHO:

That said appeal and action, Case No. 3320, in the District Court of Gooding County be dismissed with prejudice, costs to be paid by the defendant, Idaho Power Company, and that said Permit No. 18554 in the office of the Department of Reclamation of the State of Idaho, be withdrawn and cancelled, and that G. R. Dibble, and J. W. Taylor, the former being City Attorney, and the Latter being attorney of record for the City in this case, be and they are hereby directed to take all necessary action to carry out the purposes of this resolution.

PASSED BY THE CITY COUNCIL THIS 14TH DAY OF JUNE, 1949.

APPROVED BY THE MAYOR THIS 14TH DAY OF JUNE, 1949.

ATTEST:

/s/ Bernard D. Starr
City Clerk

/s/ Fred A. Kallusky
Mayor

(SEAL)

IN THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR GOODING COUNTY

CITY OF BUHL, a municipal corporation,

Plaintiff,

vs.

IDAHO POWER COMPANY, a corporation, and JAMES SPOFFORD, Commissioner of Reclamation of the State of Idaho.

Defendants.

CASE NO 3320

STIPULATION AND ORDER FOR DISMISSAL

It is hereby stipulated and agreed by and between the parties to the above-entitled proceeding, to-wit: CITY OF BUHL, a municipal corporation, plaintiff and appellant, by its City Attorney, G R Dibble, and its Attorney of Record, J W Taylor, pursuant to a resolution adopted by the Mayor and City Council of said City of Buhl on the 14th day of June, 1949, certified copy of which said resolution is attached hereto and filed herewith; IDAHO POWER COMPANY, a corporation, by its Attorney, A C Inman, and MARK R KULP, State Reclamation Engineer of the State of Idaho (successor in office and interest to James Spofford, Commissioner of Reclamation of the State of Idaho), defendants, that the above entitled action and appeal, Case No 3320, may, by the Court, be dismissed, with prejudice, any and all costs charged, and hereafter to be charged, to be paid by said defendant Idaho Power Company.

Dated this 15th day of June, 1949.

CITY OF BUHL, Plaintiff and Appellant

By (Sgd) G R Dibble
City Attorney.

(Sgd) J W Taylor
Attorney of Record.

IDAHO POWER COMPANY

By (Sgd) A C Inman
Attorney.

(Sgd) Mark R Kulp
MARK R KULP,
State Reclamation Engineer,
State of Idaho.

ORDER

Upon the above and foregoing stipulation of the parties to the above-entitled proceeding, and it appearing to the Court that the above-named Mark R Kulp, State Reclamation Engineer of the State of Idaho, is the successor in office and interest to James Spofford, Commissioner of Reclamation of the State of Idaho, and one of the defendants named in said proceeding, and the Court being fully advised, it is hereby

ORDERED that the above-entitled action and proceeding, and the petition and appeal of the said City of Buhl, a municipal corporation, the plaintiff named therein, said action and proceeding being Case No 3320, be and the same is hereby dismissed with prejudice, any and all costs charged, and hereafter to be charged, to be paid by the defendant Idaho Power Company.

Done in Open Court this 22nd day of June, 1949.

BY THE COURT:

(Sgd) D H Sutphen
Judge.

10115

IDAHO POWER COMPANY

BOISE, IDAHO

14554

June 24, 1949

RECEIVED
JUN 2[illegible]
Department of Reclamation

Mr G R Dibble
Attorney at Law
Buhl, Idaho

Dear Mr Dibble:

For your files, I am enclosing herewith one fully executed and two duplicate copies of stipulation and order for dismissal of the case of City of Buhl vs Idaho Power Company et al, Case No 3320, in the District Court in Gooding County.

This proceeding has now been dismissed, and the water right filing in the office of the Department of Reclamation has also been withdrawn and cancelled, pursuant to your letter to the State Reclamation Engineer, and the resolution adopted by the City of Buhl on June 14, 1949.

Very truly yours,

(Sgd.)A. C. Inman

A C Inman
Secretary

ACI:mb
Encl

cc: Mark R Kulp
J W Taylor

COPY

10115

C O P Y

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

IDAHO POWER COMPANY,

Plaintiff,

vs.

JAMES SPOFFORD, Commissioner of the Department of Reclamation and CITY OF BUHL,

Defendants.

OTIS E. SYSTER and MARY E. SYSTER,

Plaintiffs,

vs.

JAMES SPOFFORD, Commissioner of the Department of Reclamation and CITY OF BUHL,

Defendants.

C E R T I F I C A T E

STATE OF IDAHO)
) ss.
County of Ada)

I, JAMES SPOFFORD, Commissioner of Reclamation of the State of Idaho, do hereby duly authorize the City of Buhl, a municipal corporation of the state of Idaho, to offer such competent proof in evidence in the above entitled action on behalf of the Department of Reclamation of the State of Idaho, as its counsel shall deem proper, in support of the order made and entered by R. W. Faris, Commissioner of Reclamation, on October 9, 1938, approving the application, No. 25709, of the City of Buhl to appropriate the waters of Clear Lake, Gooding County, Idaho; and this authorization shall be deemed to have been given on and prior to February 15, 1939, when

said action was tried; and the Department of Reclamation of the State of Idaho does hereby adopt for and on its own behalf all the proof introduced in evidence by the said City of Buhl in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office this 28th day of February, 1939.

(SEAL)

/s/ JAMES SPOFFORD
Commissioner of Reclamation of the State of Idaho

10115

March 1, 1939

Re: IDAHO POWER COMPANY
vs.
CITY OF BUHL

MR. JAMES R. BOTHWELL,
Bothwell & Povey,
Attorneys & Counselors-at-Law,
Twin Falls, Idaho.

Dear Mr. Bothwell:

Complying with your request as stated in your letter of February 24, relative to the signing of a certificate authorizing the City of Buhl to offer its proof on behalf of the Department of Reclamation to comply with Section 145, Session Laws of 1935.

Please find enclosed signed certificate with Commissioner's seal. Our receiving clerk stamped the day this instrument was received in this office, but we trust this will not affect the instrument.

Very truly yours,

JAMES SPOFFORD
Commissioner of Reclamation

JS/jf
encl.

10115

BOTHWELL & POVEY
ATTORNEYS AND COUNSELLORS AT LAW
WOODS BUILDING
TWIN FALLS, IDAHO

JAMES R. BOTHWELL

HARRY POVEY

Permit #10415

February 24, 1939.

RECEIVED
FEB 28 1939
Department of Reclamation

Mr. James Spofford
Commissioner of Reclamation
Boise, Idaho

Re Idaho Power Co. v. City of Buhl.

Dear Mr. Spofford:

As suggested on Wednesday, we are enclosing herewith certificate authorizing the City of Buhl to offer its proof on behalf of the Department of Reclamation to comply with section 145 Session Laws of 1935, on page 350 thereof, where it is stated:

> "Such appeal shall be heard and determined upon such competent proof as shall be adduced or offered by the department of reclamation or some person duly authorized in its behalf."

I talked with Mr. Quinn after I had seen you, and I think that he is conversant with the facts.

Please sign the certificate and attach the commissioner's seal and mail to us and we shall attend to placing it in the record.

Very truly yours,

BOTHWELL & POVEY,

By James R. Bothwell

JRB/cj
Encl.-1

10415

FINANCIAL STATEMENT OF THE CITY OF BUHL, IDAHO, AS OF

April 1st, 1937

Assessed valuation of all property for the year $951,647.00

Income, for year 1936-37
Based on collections for first 6 months

Water	$14054.88
Licenses	650.00
Fines	646.25
Permits	75.00
Dog Tax	124.00
Interest	140.00
	15690.13

Assets

Water System, Reservoir and Filteration after depreciation	$134,700.00
Sewer System after depreciation	121,600.00
Street Paving, after depreciation	145,800.00
Street Lighting System, after depreciation	14,400.00
City Hall and other buildings after depreciation	45,400.00
Fire Department, Engines and equipment after depreciation	18,000.00
Parks and Public places, after depreciation	12,500.00
Miscellaneous tool and equipment	5,200.00
Cash on hand	33,075.84
	533,675.84

Liabilities

Outstanding bill and claims	none
Warrants outstanding	none
General Obligation Bonds outstanding	$ 74,500.00
Resources, net	459,175.84
Levy for 1936-37	38,734.45
Total	497,910.29

State of Idaho-County of Twin Falls-City of Buhl)ss

I, Ruth Yeamans, the duly elected, qualified and acting City Clerk of the City of Buhl, do hereby certify that the foregoing is a true statement of the finances of the City of Buhl, as shown by the records on file in my office.

Dated April 13th, 1937.

(CORPORATE SEAL OF CITY OF BUHL) RUTH YEAMANS
City Clerk

In testimony whereof, we, BARZILLA W. CLARK, Governor of the State of Idaho, and IRA H. MASTERS, Secretary of State of the State of Idaho, have hereunto caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed this 29th day of November, 1937.

STATE OF IDAHO

(SEAL)

By BARZILLA W. CLARK
Governor

Countersigned:

By IRA H. MASTERS
Secretary of State.

NOTICE OF WATER FILINGS UNDER
H. B. 293, 1935 SESSION LAWS.

No. 18554.

Date of Notice 5-19 1937
Date of Publication 6-10 1937
Last Date for Protest 6-28 1937
IF PROTESTED
Date of Notice of Hearing 7-8 1937
Date of Hearing 8-2 1937
Notice of Appeal filed 19

EXHIBIT "A"

APPLICATION FOR PERMIT
TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO

Application No. 25707
Permit No. 18554
District No.

1. Name of Applicant: H. A. DE NEAL, AGENT, CITY OF BUHL, IDAHO

Postoffice address Buhl County: Twin Falls State: Idaho

I. If applicant is a corporation, give:
(a) Date and place of incorporation: Municipal Corporation under statute.
(b) Amount of capital stock:
(c) Amount paid in:
(d) Names and addresses of directors: Mayor -Gan L. Thompson - Directors (Councilmen) C. R. Overbaugh, James Cannon, H. A. DeNeal, Grant Miller, all of Buhl, Idaho.

II. The financial resources of the applicant are:
(a) Cash on hand: $36,075.84
(b) Treasury stock:
(c) Bonds to be issued:
(d) Other resources: $497,600.00

2. Quantity of water claimed: 1000 cubic feet per second.

3. Source of water supply: Clear Lake which is a tributary of Snake River.

4. Location of point of diversion: N.43°30' E. 1805' feet distant from the South ¼ corner of Section 2, T. 9 S., R. 14, E.,B. M., and is in the Lot 7 of Section 2, T. 9 S.,R.14 E.,B.M., County of Gooding.

5. Water is to be used for: Power and municipal purposes for the City of Buhl, Idaho.

6. If for mining, milling, power or manufacturing purposes, give:

(a) Point of use of water: N 77°0' E. 578 feet distant from the South ¼ corner of Section 2, T. 9 S., R. 14 E., B. M., in the Lot 7 of Section 2, T. 9 S., R. 14 E., B. M.

(b) Amount of power generated: 6800 H. P., under 75 feet head.

(c) Water is to be returned to Snake River at a point N 77°0' E. 578 feet distant from the South ¼ corner of Section 2, T.9, S., R. 14 E.,B. M., in the Lot 7 of Section 2 T. 9 S.,R.14 E.,B.M.

7. Estimated cost of works: $75,000.00

8. Kind of works: Conc. dam-headgates & rivited steel pipe conduit, and intake structure.

9. Height of dam 7 feet; length of dam at top 210 feet; length of dam at bottom 210 feet; material used in dam: reinforced concrete

10. Size of headgate: Width 7½' (each) feet; height 7½' feet.

11. Ditch: Width at bottom feet; width at water line feet; depth of water feet; dimensions of flume:

Diameter of pipe (2) 90 inches; length of conduit .21 miles. Average grade per mile 335 feet.

12. The time required for the completion of such work is Five years.

13. The time required for the complete application of the water to the proposed use is Six additional years.

14. The land to be irrigated is described in the following tabulation: See remarks.

15. (a) Is reservoir to be used: If so, fill in (b) and (c) below.
(b) Name of Reservoir and number of Storage Permit;
(c) Date of filing of Application for Storage Permit and Name of Applicant;

BE IT KNOWN THAT The undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

CITY OF BUHL
H. A. De NEAL Applicant.

By H. A. DE NEAL
Agent for City Buhl.

Date of first receipt at Department of Reclamation: 3:00 P.M., Mar. 12, 1937.
Returned to applicant for correction: Mar. 15, 1937
Corrected application received: May 13, 1937.

APPROVAL OF COMMISSIONER OF RECLAMATION

The number of this permit is 18554.
Recorded in Book 67 Page 18554 Approved Nov. 29, 1937.
This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:
Bond in the sum of $2000.00 to be filed on or before January 28, 1938.
Work to begin on or before and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.
One-fifth of the work above specified to be completed on or before May 29, 1940
The whole of said work to be completed on or before November 29, 1942.
Beneficial use of water appropriated in accordance herewith, to be made on or before November 29, 1948.

Witness my hand this 29th day of November, 1937.

R. W. FARIS
Commissioner of Reclamation.

Remarks: Point of diversion-N.43°30' E. 1805 ft. from S¼ cor. Sec. 2-9-14
Point of Use and Return-N.77°0' E. 578 ft.from S¼ cor. Sec. 2-9-14

14.

Twp.	Range	Sec.	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	Totals.

IN THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR GOODING COUNTY

CITY OF BUHL, a municipal corporation,

Plaintiff

vs.

IDAHO POWER COMPANY, a corporation and JAMES SPOFFORD, Commissioner of Reclamation of the State of Idaho,

Defendants.

PETITION

Comes now the above named plaintiff and having duly filed its statement and protest in connection with the submission of proof of beneficial use of water of Idaho Power Company under permit No. 10415, protesting against and objecting to the consideration of such proof by the Commissioner of Reclamation of the State of Idaho and the issuance of water license under said permit and feeling aggrieved by the determination of the Commissioner of Reclamation of the State of Idaho in issuing his order dated December 28, 1938, overruling the said protest of the City of Buhl, and directing that water license be issued to Idaho Power Company, a corporation, under said permit and issuing water license No. 10415 to Idaho Power Company, a corporation, for 526 cubic feet per second of the waters of Clear Lake and its feeders for power purposes, with a priority date of January 18, 1919, and by the statements contained in said water license and in particular the statement that said right to the use of said water has been perfected in accordance with the laws of the State of Idaho, and sets forth its reasons for appeal from said order and said water license and the statements therein contained and in support thereof alleges,

I.

That the plaintiff is now and at all times herein mentioned has been a municipal corporation, duly organized and existing under and by virtue of the laws of the State of Idaho.

II.

That the defendant Idaho Power Company is now and at all times hereinafter mentioned has been and now is a corporation, organized and existing under and by virtue of the laws of the State of Maine and by virtue of a compliance with the constitution and statutes of the State of Idaho, is authorized to transact business in the State of Idaho.

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III.

That said permit No. 10415 was issued on the 18th day of January, 1919 to W. C. Hazzard and that the Idaho Power Company, a corporation, by mesne assignments, acquired the rights and privileges of said W. C. Hazzard under said permit on or about the 16th day of July, 1927, and ever since said date has been the owner of said permit, together with such rights and privileges under said permit, if any, to which it might be entitled by virtue of a compliance with the laws of the State of Idaho relating to such water permits, subject to the rights and privileges of the City of Buhl, a municipal corporation, as hereinafter alleged.

IV.

That during the months of November and December, 1937, the Commissioner of Reclamation of the State of Idaho caused to be published in the Gooding Leader, a newspaper published at Gooding, Gooding County, Idaho, notice of the intention of Idaho Power Company, a corporation, to submit proof of application of water to beneficial use under the terms and conditions of Permit No. 10415 theretofore issued by the State Engineer of the State of Idaho, a copy of which said published notice is in the words and figures following, to-wit:

"Notice for Publication
NOTICE OF PROOF APPLICATION
OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10 a. m. on the 11th day of December, 1937, at 1220 Idaho Street, Boise, County of Ada, State of Idaho, before M. E. Hughes, Notary Public, proof will be submitted of the application to beneficial use of 526 cubic feet per second of the waters of Clear Lake and its feeders in accordance with the terms and conditions of Permit No. 10415 heretofore issued by the State Engineer of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Idaho Power Company, Boise, Idaho.

The use to which said water has been applied is electrical power generation.

The amount applied to beneficial use is 526 cubic feet per second, or so much thereof as is available.

The place where said water is used (if for irrigation, give full and accurate description of the lands irrigated) Power plant and works located in Lot 7, Section 2, Township 9 South, Range 14 E. B. M., in Gooding County, Idaho.

The name of the canal or ditch or other works by which said water is conducted to such place of use is: Idaho Power Company dam, diverting works and steel pipe line.

The right to take water from such works is based upon Permit No. 10415.

The source of supply from which such water is diverted is Clear Lakes and its feeders, a tributary of Snake River.

The date of priority which said user is prepared to establish is January 18, 1919.

R. W. HARIS,
Commissioner of Reclamation."

V.

That the plaintiff, City of Buhl, a municipal corporation, desiring to protest against the statements made by the defendant Idaho Power Company, a corporation, and in accordance with the provisions of Idaho Code Annotated, section 41-217, filed a statement with the Department of Reclamation of the State of Idaho, prior to the date set for such proof, stating clearly the reasons for such protest and stating the reasons why a water license should not be issued under said permit, which protest is based solely upon the statements in such notice and was duly sworn to by said protestant, a full, true and correct copy of which said statement and protest by the City of Buhl, properly certified by the Commissioner of Reclamation of the State of Idaho is on file in the office of the Clerk of the above entitled court in the above entitled action, and by reference is made a part hereof as if herein set forth in full.

VI.

That the right to the use of all of the water sought to be put to a beneficial use under said Permit No. 10415, and for which the Idaho Power Company, a corporation, sought to make proof of beneficial use under and by virtue of said notice, was and is held by the City of Buhl under and by virtue of and subject to the terms and conditions of Permit No. 18554 issued November 29, 1937 by the Commissioner of Reclamation of the State of Idaho, based on application No. 25707 dated March 12, 1937, a full, true and correct copy of which said application and permit, excepting the tracing accompanying said application, is attached hereto, marked Exhibit "A" and by reference made a part hereof.

VII.

That permit No. 10415 was issued to W. C. Hazzard and subsequently assigned by mesne assignments to the Idaho Power Company and is null and void for the reason that the same has lapsed for failure of the Idaho Power Company, or any person holding said permit, to comply with the law relative to the development of said project or to apply said water to a beneficial use under the terms of said permit and the statutes relating thereto.

VIII.

That said Commissioner of Reclamation of the State of Idaho was and is without power or authority to issue said water license granting to Idaho Power Company the right to use any of the waters of Clear Lakes in Gooding County, Idaho, and its feeders under said permit No. 10415 or any extension thereof, for the reason that there is no water in said Clear Lakes and its feeders in excess of the water covered by the permit of the plaintiff herein, being permit No. 18554 based on Application No. 25707 filed in the office of the Department of Reclamation on

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March 12, 1937, and which permit is in full force and effect; and that plaintiff has fully and completely complied with all of the terms, conditions and provisions of said permit and the statutes relating thereto, and that said Permit No. 18554 issued to the plaintiff herein covers and includes all of the waters of Clear Lakes and its feeders.

IX.

That said proof of beneficial use of water was not made within six years from the date set for the completion of works under said permit No. 10415, and the Commissioner of Reclamation was without power or authority to consider or file said proof of beneficial use or to issue the water license hereinabove referred to.

X.

That plaintiffs reasons for appeal from said order and water license made and issued by the Commissioner of Reclamation of the State of Idaho, as follows:

1. That the facts do not justify the making of the order or the issuance of said water license.

2. That said water license was issued in violation of the provisions of I. C. A. Sections 41-211 and 41-212, providing that in no case shall proof of beneficial use of water be submitted more than six years after the date set for completion of works; that under said Permit No. 10415 the Idaho Power Company was required to complete said works of diversion on or before the 21st day of May, 1933, and that at the time said Idaho Power Company notified the Department of Reclamation that it was prepared to prove that water under said permit had been beneficially applied and at the time said water was given and proof submitted, more than six years had elapsed since said works of diversion were required to be completed.

3. That the Commissioner of Reclamation was without jurisdiction, power or authority to make said order or to issue said water license.

4. That said Commissioner of Reclamation erred in overruling and denying the protest of the City of Buhl, and in accepting and considering proof of beneficial use submitted under said permit over the protest of the City of Buhl.

WHEREFORE, plaintiff prays that said proof of beneficial use, said order dated December 28, 1938, and water license No. 10415 issued under said permit pursuant to said order, be set aside and held for naught; for such other and further relief as to the court may seem just and equitable, and for costs of suit.

JAMES R. BOTHWELL

HARRY POVEY

Residing at Twin Falls, Idaho

J.H. SHERPEY

City Attorney, Residing at Buhl Idaho

ATTORNEYS FOR PLAINTIFF.

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STATE OF IDAHO)
) ss
County of Twin Falls)

Gan L. Thompson, being first duly sworn, deposes and says:

That he is the duly elected, qualified and acting Mayor of the City of Buhl, Idaho, the above named plaintiff, and makes this verification for and on behalf of said plaintiff; that he has read the foregoing petition and knows the contents thereof, and that he believes the same to be true.

GAN L. THOMPSON

Subscribed and sworn to before me this 23rd day of February, 1939.

HARRY POVEY
Notary Public for State of Idaho
Residing at Buhl, Idaho.

(SEAL)

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STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In THE MATTER OF THE PROTEST)
: ORDER
AGAINST ISSUANCE OF LICENSE)

Permit No. 10415

Under date of June 29, 1914, Wm. G. Hazzard, whose post office address was Clear Lake, Idaho, made application No. 15399 for permit to appropriate 1,000 second feet of water from Clear Lake and its feeders, in Gooding County, Idaho, for power purposes. Point of diversion was designated as being in Lot 7, Section 2, Township 9 South, Range 14 East, Boise Meridian, and North 54° 8' East, 1685.5 feet from the Southeast corner of the Southwest Quarter of Section 2, Township 9 South, Range 14 East, Boise Meridian. The point of use of such water was described as being at the foot of "Devil's Washboard" N. 81°0' East, 576 feet from the Southeast corner of the Southwest Quarter of Section 2, Township 9 South, Range 14 East, Boise Meridian.

Under date of July 8, 1914, the above-mentioned application for permit was approved by the State Engineer and Permit No. 10415 was issued to the applicant. The time for completion of works and application of water to beneficial use was fixed in the permit as follows: One-fifth of the work to be completed before January 8, 1917; completion of works before July 8, 1919; beneficial use of water to be made on or before July 8, 1925.

Under date of March 31, 1919, an indefinite extension of time for completion of works was granted the permit holder, upon showing made by him to the effect that litigation was pending over which he had no control. Under date of March 3, 1926, the State Commissioner of Reclamation (successor to State Engineer) made and entered an order that the time for completion of works under said above-mentioned permit be extended to May 21, 1926, and that the time for beneficial use of water be extended to May 21, 1932. Under dateof May 13, 1926, a still further extension of time for

completion of works was made by the Commissioner of Reclamation to May 21, 1927, which automatically extended the time for proof of application of water to beneficial use.

Proof of completion of works was made May 21, 1927, and certificate issued June 1, 1927.

Several transfers of ownership of the said above-mentioned permit were made as follows: (1) Wm. G. Hazzard and wife to BANKERS' TRUST COMPANY, a Utah corporation, dated July 16, 1937; (2) BANKERS' TRUST COMPANY to FIRST SECURITY TRUST COMPANY, dated July 31, 1933; (3) BANKERS' TRUST COMPANY and CENTRAL TRUST COMPANY to IDAHO POWER COMPANY, dated July 31, 1933.

Under date of March 12, 1937, the City of Buhl filed Application No. 25707 for permit to appropriate and divert 1,000 cubic feet per second of the waters of Clear Lake, in Gooding County, for power purposes. The Idaho Power Company protested the granting of the above-mentioned application, but after notice and hearing, the application was approved and on November 29, 1937, Permit No. 18554 was issued to the applicant.

On December 11, 1937, pursuant to notice given as provided by law, the Idaho Power Company filed with the Department of Reclamation of the State of Idaho its proof of application of water to beneficial use under Permit No. 10415. On the same day, the City of Buhl filed with the Department what was designated a "Statement and Protest" against "the statements made by the Idaho Power Company in the published notice of and intention to submit proof of application of water to beneficial use," and also "against the issuance of water license under said permit."

In its "statement and protest" the City set up six paragraphs or reasons in support thereof; (1) that the water in question was held by the City under permit No. 25707, issued March 12, 1937; (2) that the power company's permit No. 10415 had lapsed for failure of the company "to apply said water to a

beneficial use under the terms of said permit and the statutes relating thereto", (3) that there is no water in Clear Lake in excess of the water covered by the City's permit No. 25707; (4) that said permit No. 25707 covers and includes all of the waters of Clear Lake; (5) that the use for which the water is to be applied (i.e., electrical power generation) is not a beneficial or public use; and (6) that a water license issued to the Power Company would deprive the City of the right to further comply with the provisions of its Permit No. 25707 and render the same subject to cancellation.

The law makes no provision for a hearing on protest against issuance of license, but upon receipt of protest, the respective parties were requested to furnish briefs in support of their contentions with reference to this matter. The brief of the protestant, City of Buhl, was received at this office on or about May 6, 1938, and that of the protestee at a somewhat later date.

Of the numerous grounds of protest urged by the protestant, only two seem pertinent to the situation her existing, viz; The status of Permit No. 18554 to the city of Buhl and the right of the Idaho Power Company, holder of Permit No. 10415, to make proof of application of beneficial use after the six-year limit fixed by Section 41-211, Idaho Code Annotated. With reference to the status of Permit No. 18554, City of Buhl, it seems only necessary to quote the statute with reference to priority which is as follows:

> "Section 41-106. Priority.--As between appropriators, the first in time is first in right."

In the case of Speer vs. Stephenson, 16 Idaho 707, 102 Pac. 365, the Supreme Court of this state defined a permit as follows:

> "Permit is not an appropriation of the public waters of state, but is the consent of state given in manner provided by law to construct and acquire real property. Permit gives applicant an inchoate right, which will ripen into a legal and complete appropriation only upon completion of works and application of water to a beneficial use."

Many other citations are submitted confirming the above-

mentioned decision. It is true that Section 41-211 of the Code provides that proof of application of water to beneficial use in no case shall be more than six years from the date set for completion of works, but subsequent Section 41-213 contains the following provision ***provided, that whenever proof of the beneficial application of water shall be offered subsequent to the date stated in the permit, or in any authorized extension thereof, when such beneficial application shall be made, such proof shall be taken, and if satisfactory to the department of reclamation, a license shall be issued by the department the same as though such proof had been made before such date fixed for such beneficial application, but the priority of the right established by such proof shall not date back to the date of the application for the permit to which such right would relate under the provisions of this chapter, but shall bear a date which shall be subsequent to the date of such application, a time equal to the difference between the date set in such permit, or extension thereof, for such beneficial application of such water and the date of such proof***

It is obvious that there is a conflict between the provisions of Section 41-211 and Section 41-213, with reference to the time of making proof of application of water to beneficial use, but the proviso contained in Section 41-213 must have been inserted by the Legislature for some purpose and if it has any purpose it is to provide specifically for the making of proof of application of water to beneficial use after the time set by the permit for completion of works.

It has long been the practice of this department to receive and approve applications for license after the six-year period fixed in the permit had expired. The brief of the Idaho Power Company cites as an example of this practice a case which is to be found in the files of the Department of Reclamation, in

Book 7 of Licenses, page 3658. In this case, application for permit was filed on August 4, 1913, proof of beneficial use was due March 6, 1914 and was not made until August 9, 1930, or more than 16 years late. In another more recent case, involving a project of considerable magnitude, the permit was dated December 1, 1911, proof of application of water to beneficial use due January 20, 1922, but not made until March 17, 1934, or a little over 12 years late. Many other similar instances might be quoted but the above are sufficient to establish the practice of this department.

Without going into details of the briefs of the respective parties, it is felt that from the proof offered by the permit holder, which is confirmed by the report of the examining engineer, on file in this department, the terms of the permit have been substantially complied with and that the permit holder is entitled to a license for the amount of water claimed in the permit, to-wit: 526 cubic feet per second, with a priority date of January 18, 1919, and it is so ordered.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of my office to be affixed this 28th day of December, 1938.

(SEAL)

R. W. FARIS,
Commissioner of Reclamation

STATE OF IDAHO

LICENSE AND CERTIFICATE OF WATER RIGHT

Water License No. 10415 Priority 1-18-1919 Amount 526 Sec. ft.

THIS IS TO CERTIFY that WILLIAM C. HAZZARD of Clear Lake, Gooding County, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated June 29, 1914, 19 ; that Permit No. 10415 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 526 second feet, was issued thereunder on June 1, 1927, showing that said works were completed on the 21st day of May, 1927, and that on the 11th day of December, 1937,

THE IDAHO POWER COMPANY, Assignee,

of Boise, State of Idaho, made proof to the satisfaction of the Commissioner of Reclamation of Idaho, of a right to the use of the waters of Clear Lake and its feeders a tributary of Snake River for the purpose of power, under Use Permit No. 10415 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 7 of Licenses, at page 3903, on the 28th day of December, 1938;

The right hereby confirmed dates from January 18, 1919;

The Point of Diversion is located N.54°8' E. 1685.5 feet from the SE corner of the SW¼ of Sec. 2 T. 9 S., R. 14 E.,B.M., in Lot 7 of in the ¼ ¼, Sec. 2, Tp. 9 S.,R. 14 E., B. M. Gooding County.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 526 cubic feet per second.

Description and location of use:

Twp	Range	Section	Forty-Acre Tract	No acres Described in Permit	No. Acres Actually Irrigated
			At foot of Devil's Wash Board, N. 81°0' E. 576 feet from the SE corner of SW¼ of Section 2, T. 9 S., R. 14 E.,B.M.		

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The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, this 28th day of December, 1938.

(SEAL)

R. W. FARIS
Commissioner of Reclamation.

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

Memorandum

Re: CLEAR LAKES POWER DEVELOPMENT
(under permit No. 10415)

This project, which consists of

1. Forebay construction of a rock-fill dam about 225 feet in length with a maximum height above old stream bed of approximately 15 feet. This dam is faced with a 3" concrete slab, laid on a slope of about 2 - 1 and said to have a cutoff wall for a considerable distance along the toe;

2. Spillway is of a concrete structure, having seven discharge gate openings, six feet wide and controlled by flash planks. Spillway discharge is over C. G. sections, having a top elevation about five feet below high water level;

3. Headworks are of concrete, having walls of about 18" minimum thickness, steel trash racks and gates. Outlet gates are installed for 90" steel pipes. One pipe of the above diameter of 1/4 inch thickness and length of 1128 feet, has been installed and tested. This pipe rests on timber supports or saddles built of 12" x 12" and 6" x 12" timber, laid on 3" x 12" sills;

4. The pipe is banded by 3" x 5" x 3/8" angle irons, spaced 11' - 4" C. C., with intermediate reinforcing angles of same material, of 120 degrees of circle or about 8 feet in length, riveted to the top of the pipe. The outlet end is equipped with a 84" "Joshua Hendy" Butterfly valve, discharging into open air at the foot of the waterfall, known locally as the "Devils Washboard;"

was viewed upon this date and conditions noted as follows, viz:

The original installation as reported under date of May 20, 1927, when examination for proof of completion for works was made, was found to be in substantially the same condition now as it was then after allowance for slight depreciation has been made. No marked deterioration of the penstock was noted at this time and the concrete headgate shows little depreciation from the effects of the weather, or otherwise. The rock-fill dam adjacent to the spillway section shows considerably more evidence of neglect, it being undermined for a distance of approximately 12 feet at one point, although the concrete facure still spans the section. Another point near the above shows signs of settlement on part of the rock fill.

No evidence of additional construction to or maintenance of the original installations was observed. All spillway openings were unobstructed and the penstock control gate was closed. Under these conditions the area of the lake was estimated to be about 12 acres.

For further details and photographic views see "Report on Completion of Works" dated May 20, 1927.

PAUL H. BERG. FRED A. TOLMAN

Dated this 16th day of March, 1937.

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STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF ENGINEER

Permit No. 10415

This proof is for Beneficial Use In Water District No. ____

1. Name of applicant Idaho Power Company

2. Source of water supply: Clear Lakes and its feeders

3. Location of point of diversion: Is in the Lot 7 of Section 2
T. 9S. R. 14 E., B. M. County of Gooding

4. Describe works as they exist, giving dimensions and capacities of same: Diversion works include Dam of earth, rocks and concrete. Head works and a steel penstock of 90" Diam. X about 1100 ft. in length. Plant equipment includes: 1 Hor. type Francis Turbine, and 1 Westinghouse 3125 K.V.A. generator

5. Water is used for Power

6. State whether or not water has been turned into works of diversion: Yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation): To be used for power at Foot of Devils Wash Board N. 31°00' E. 576 feet from the SE corner of the SE¼ of Section 2, T. 9 S., R. 14 E., B. M.

(Submit map on attached plat, showing location and details of above description)

8. What large stream would the water here appropriated finally reach: Snake River

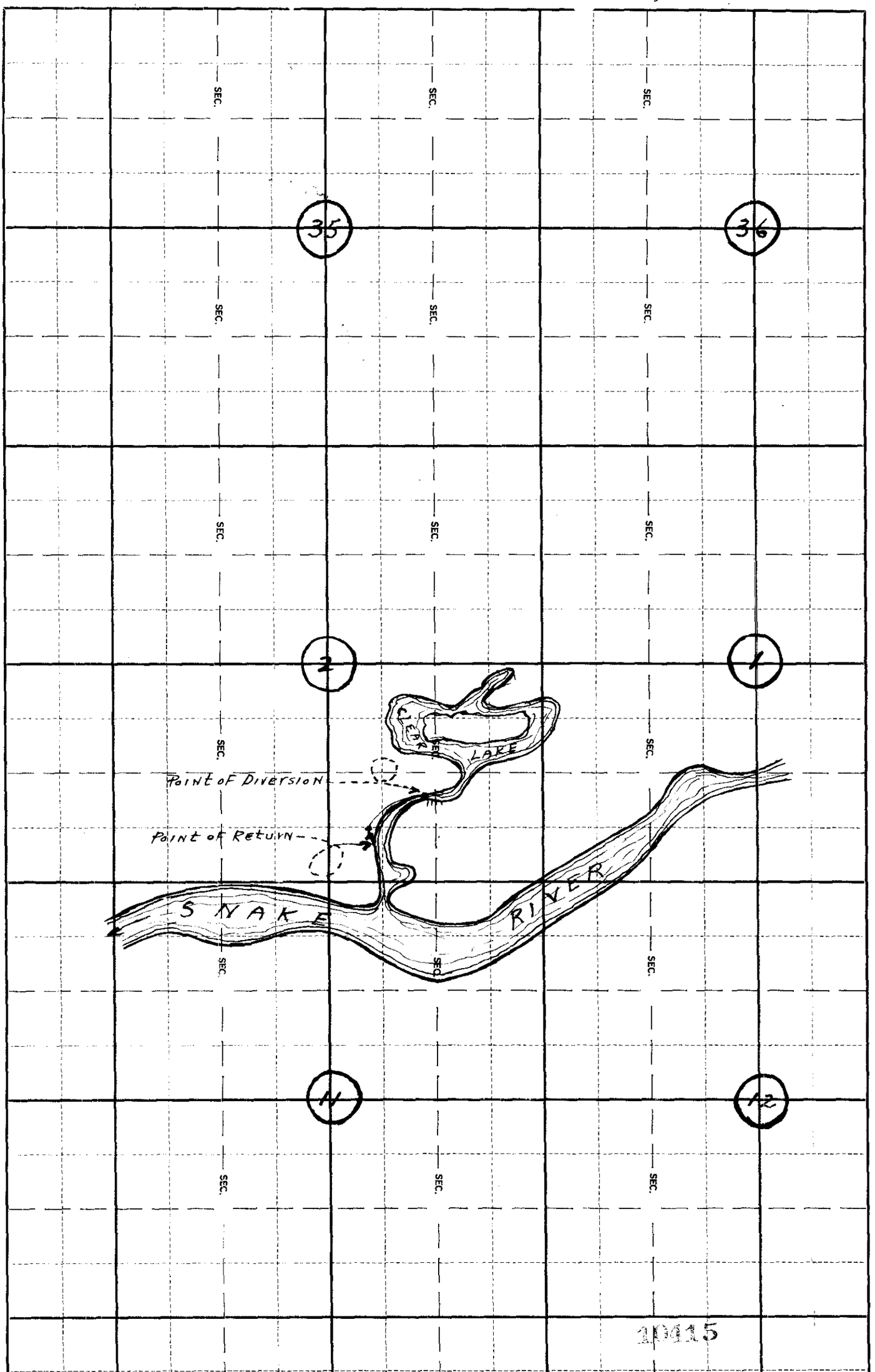
Remarks: Plant operates under 78 ft. head and a test run taken during measurement of available water developed 2100 K.W. Power thus developed is delivered to the Main Trunk Line of the Company's distribution system for general use as required. The rate of stream flow as measured by Mr. T.R. Newell and his assistant Mr. Benedict was 518 second feet, which amount was said to operate the plant at 87½ of max. capacity.

This examination was made on the 9th day of Nov. 1937.

(Signed) Fred A. Tolman
Examiner.

NAME OF APPLICANT

FORM No. 0



10015

SCALE: 2 INCHES EQUAL 1 MILE. DRAW PLAN IN INK

SYMS-YORK CO., BOISE 102588

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

REPORT OF ENGINEER

Permit No. 16618

Report on Proof of Beneficial Use

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

Received
Nov. 13, 1937
Department of Reclamation

Boise, Idaho, November 12, 1937

Mr. R. W. Faris,
Commissioner of Reclamation,
Boise, Idaho.

Dear Mr. Faris:-

Pursuant to your request a trip was made to Clear Lakes hydro-electric plant near Buhl for the purpose of measuring the discharge in head-race channel leading from Clear Lakes to feeder pipe intake. Mr. Tolman of your office accompanied and secured observations of lake levels, forebay levels, tail race levels and plant operation during period of discharge measurements.

On November 9, 1937, the flow was measured in the head race channel at a point approximately 250 feet upstream from the feeder pipe intake and 100 feet downstream from lake outlet proper. Measuring conditions were not good account roughness of section and angularity of current. The measurement was started at 1:15 p. m. and completed at 3:10 p. m.; discharge, 518 second-feet. The water level in the lake rose slightly during the mearurement as shown by Mr. Tolman's observations. (Mr. Tolman thought slight rise of 0.05 foot probably due to wind on lake surface.)

The flow leaking through the flashing in the control strusture immediately below the intake and below the point of measurement was estimated at 2 second-feet.

The power company forces are working at the present time on the channel leading from the lake outlet proper to the intake with a view to sealing off the underground seepage in this section. Irrigation diversions from the spring channels leading to the lake proper were not canvassed.

For your information reference is made to stream-flow records obtained on Clear Lakes outlet near Buhl, Idaho, June 6, 1917, to November 27, 1920. See Water-Supply Paper No. 533, pages 162-165. A miscellaneous measurement was made on August 22, 1937, was reported to you in my letter of August 25, 1937.

Very truly yours,

(Signed) Thomas R. Newell
District Engineer

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BEFORE THE DEPARTMENT OF RECLAMATION

of the

STATE OF IDAHO

IN THE MATTER OF THE PROTEST OF THE CITY OF BUHL, IDAHO, IN CONNECTION WITH THE SUBMISSION OF PROOF OF BENEFICIAL APPLICATION OF WATER OF IDAHO POWER COMPANY UNDER PERMIT No. 10415.	) STATEMENT AND PROTEST BY CITY OF BUHL

TO: THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO, to R. W. PARIS, Commissioner of Reclamation; M. E. HUGHES, Notary Public; and to IDAHO POWER COMPANY:

You and each of you will please take notice that the City of Buhl, a municipal corporation, hereby protests against the statements made by Idaho Power Company in the published notice of and intention to submit proof of application of water to beneficial use under the terms and conditions of permit No. 10415 heretofore issued by the State Engineer of the State of Idaho, which proof, according to the published notice, is to be submitted before M. E. Hughes, Notary Public, on the 11th day of December, 1937 at 10:00 o'clock A. M., at 1220 Idaho Street, Boise, Ada County, State of Idaho, said protest being made under the provisions of Idaho Code Annotated, Section 41-217; and also protests against the issuance of water license under said permit, and in support of said protest said City of Buhl, as protestant, states as follows:

That said protestant hereby protests against all of the statements contained in said notice, and objects to the hearing or the submission of proof of beneficial use under said permit for the following reasons, to-wit:

1. That said Permit No. 10415 was issued on the 18th day of January, 1919 to W. C. Hazzard, and that the Idaho Power Company, a corporation, by mesne assignments acquired the rights and privileges of said W. C. Hazzard under said permit on or about the 16th day of July, 1927, and ever since said date have been and now are the owners of said permit together with the rights andprivileges thereunder; that all of the water sought to be put to a beneficial use, and for which the Idaho Power Company is seeking to make proof of such beneficial use under and by virtue of said notice, is held by the protestant the City of Buhl thereunder and by virtue of Permit No. 25707 issued to said City of Buhl on March 12, 1937.

2. That permit No. 10415 was issued to W. C. Hazzard and subsequently assigned by mesne assignments to the Idaho Power Company and is null and void for the reason that the same has lapsed for failure of the Idaho Power Company or any person holding said permit to comply with the law relative to the development of said project and to apply said water to a beneficial use under the terms of said permit and the statutes relating thereto.

10415

3. That this protestant protests against the issuance of said certificate or any water license or right to appropriate or use any of the water of Clear Lakes of Gooding County, Idaho, and its feeders under said permit No. 10415 or any extension thereof, for the reason that there is no water in said Clear Lakes or its feeders in excess of the water covered by the permit of the protestant herein, being No. 25707 issued to the protestant by the Department of Reclamation on March 12, 1937, and which permit is in full force and effect; and that protestant has fully and completely complied with all of the terms, conditions and provisions of said permit and the statutes relating thereto.

4. That the permit No. 25707, issued to the City of Buhl, covers and includes all of the waters of Clear Lakes and its feeders.

5. That the use for which the Idaho Power Company is attempting to appropriate said waters from said place under and by virtue of said notice is not to be applied to a beneficial or public use.

6. That is said Idaho Power Company is permitted to use and appropriate said water under its said permit, and if a water license is issued therefor, the said protestant will be deprived of the right to further comply with the provisions of its said permit and render the same subject to cancellation, to its irreparable damage and injury.

WHEREFORE, protestant prays that an order by made by the Department of Reclamation fixing a time and place for the hearing of this protest, and that after such hearing the Department of Reclamation refuse to issue a water license to said Idaho Power Company based upon said Permit No. 10415.

Dated this 10th day of December, 1937.

CITY OF BUHL

By GAN L. THOMPSON
Mayor

(SEAL)

Attest:

RUTH YEAMANS
Clerk

JAMES R. BOTHWELL

HARRY POVEY
Residing at Twin Falls, Idaho

J. H. SHERFEY
City Attorney,
Residing at Buhl, Idaho.

ATTORNEYS FOR PROTESTANT

10415

STATE OF IDAHO)
) ss.
County of Twin Falls)

GAN L. THOMPSON, being first duly sworn, deposes and says:

That he is the duly elected, qualified and acting Mayor of the City of Buhl, Idaho, the above named protestant; that he has read the foregoing protest and statement and knows the contents thereof, and that he believes the same to be true.

GAN L. THOMPSON

Subscribed and sworn to before me this 10th day of December, 1937.

H. A. DENEAL
Notary Public for the State of Idaho, residing at Buhl, Idaho

(Seal).

Service of the foregoing protest and statement admitted this 11th day of December, 1937, by receipt of copy thereof.

IDAHO POWER COMPANY
By A. C. Inman

Service of the foregoing protest and statement admitted this _____ day of December, 1937, by receipt of copy thereof.

_____

Service of the foregoing protest and statement admitted this _____ day of December, 1937, by receipt of copy thereof.

_____

Serve: James Spofford
Comm. Reclamation.

IN THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR GOODING COUNTY.

- - - - - - -

CITY OF BUHL, a municipal corporation,

Plaintiff,

vs.

IDAHO POWER COMPANY, a corporation and JAMES SPOFFORD, Commissioner of Reclamation of the State of Idaho,

Defendants.

- - - - - - -

COPY

NOTICE OF APPEAL.

RECEIVED
SHERIFF'S OFFICE
FEB 24 1939
GOODING COUNTY
IDAHO

TO: IDAHO POWER COMPANY, A CORPORATION AND TO THE COMMISSIONER OF RECLAMATION OF THE STATE OF IDAHO, AND TO WHOM IT MAY CONCERN.

NOTICE IS HEREBY GIVEN that the City of Buhl, a municipal corporation, feels aggrieved by the determination of the Commissioner of Reclamation of the State of Idaho in issuing his order dated December 28, 1938 overruling the protest of the City of Buhl against the issuance of water license to Idaho Power Company, a corporation, under Permit No. 10415 and directing that water license be issued to Idaho Power Company, a corporation, under said permit; and in issuing water license No. 10415 to Idaho Power Company, a corporation, for 526 cubic feet per second of the water of Clear Lake and its feeders for power purposes with a priority date of January 18, 1919, and the statements contained in said water license and in particular the statement that said right to the use of said waters has been perfected in accordance with the laws of Idaho.

NOTICE IS FURTHER GIVEN that the said plaintiff, City of Buhl, has filed in the office of the Clerk of the above entitled court

1. Copy of Water License No. 10415

2. Copy of protest of City of Buhl against the issuing of such license filed with the Department of Reclamation.

3. Copy of the report of the examination of the place of use of such waters made under the authority of the Department of Reclamation.

4. Copy of the order of the Commissioner of Reclamation of the State of Idaho, dated December 28, 1938, denying and overruling the protest of the City of Buhl and directing the issuance of water license.

5. Copy of the following documentary proof in relation to such use which has been filed in the office of the Department of Reclamation, to-wit:

(a) Letter of Thomas R. Newell, District Engineer of the United States Geological Survey, attached to the engineer's report hereinabove referred to.

(b) Memorandum signed by Fred A. Tolman and Paul H. Berg, dated March 16, 1937.

each and all of said copies being duly certified by the Department of Reclamation as full, true and correct copies of said instruments as the same appear on record in the Department of Reclamation of the State of Idaho; and that said City of Buhl, a municipal corporation, appellant herein, has filed in the office of the Clerk of the above entitled court a petition to such court setting forth appellant's reason for appeal.

That full, true and correct copies of the papers filed with said district court as hereinabove enumerated, are attached hereto, marked Exhibit "A" and made a part hereof.

This appeal is taken from all the proceedings had in the above entitled matter in connection with the proof of beneficial use and issuance of water license before the Commissioner of Reclamation of the State of Idaho.

Dated this 23rd day of February, 1939.

CITY OF BUHL

By GAN L. THOMPSON
Mayor.

ATTEST:

RUTH L. YEAMANS
City Clerk.

(SEAL)

JAMES R. BOTHWELL

HARRY POVEY
Residing at Twin Falls, Idaho

J. H. SHERFEY
City Attorney
Residing at Buhl, Idaho

ATTORNEYS FOR PLAINTIFF.

STATE OF IDAHO)
) ss
COUNTY OF ADA)

I, James Spofford, Commissioner of Reclamation of the State of Idaho, do hereby certify that the attached are full, true and correct copies of the following instruments, as same appear on record in the Department of Reclamation of the State of Idaho:

1. Statement and Protest by City of Buhl in connection with Permit No. 10415.

2. Report of Engineer, Fred A. Tolman, on examination on proof of beneficial use under Permit No. 10415.

3. Letter from Thomas R. Newell, District Engineer of the United States Geological Survey, attached to said Engineer's Report.

4. Memorandum signed by Fred A. Tolman and Paul H. Berg, dated March 18, 1937.

5. License and Certificate of Water Right No. 10415, issued to the Idaho Power Company, December 28, 1938.

6. Order of R. W. Faris, Commissioner of Reclamation, dated December 28, 1938.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 14th day of February, A. D., 1939.

JAMES SPOFFORD

(SEAL). Commissioner of Reclamation

10415

BOTHWELL & POVEY

JAMES R. BOTHWELL — ATTORNEYS AND COUNSELLORS AT LAW — HARRY POVEY

WOODS BUILDING

TWIN FALLS, IDAHO

February 24, 1939

Honorable James Spofford
Commissioner of Reclamation
Boise, Idaho

Dear Sir: In re Permit No. 10415

We wish to thank you for the certified copies in connection with the above permit enclosed in your letter dated February 14, 1939. We herewith enclose our check for $6.00 to cover your charges, as shown by the enclosed statement. Please receipt the enclosed statement and return the same to us.

Very truly yours,

BOTHWELL & POVEY

By Harry Povey

HP - b
Enc. 2

P 16813

10225

February 14, 1939

Bothwell & Povey,
Twin Falls, Idaho

To State Department of Reclamation- Dr.

Certified copies instruments in re Permit No. 10415

30 folios at 20¢ - - - - - $6.00

Pd.

10415

February 14, 1939

Re: Permit No. 10415

Messrs. Bothwell & Povey,
Woods Building ,
Twin Falls, Idaho.

Attention, Mr. Harry Povey.

Gentlemen:-

In reply to your letter of February 9th, we are enclosing certified copies of the following:

1. Statement and Protest by City of Buhl in connection with Permit No. 10415.

2. Report of Engineer, Fred A. Tolman, on examination on proof of beneficial use under Permit No. 10415.

3. Letter from Thomas R. Newell, District Engineer of the United States Geological Survey, attached to said Engineer's report.

4. Memorandum signed by Fred A. Tolman and Paul H. Berg, dated March 16, 1937.

5. License and Certificate of Water Right No. 10415, issued to the Idaho Power Company, December 28, 1938.

6. Order of R. W. Faris, Commissioner of Reclamation, dated December 28, 1938.

We note your request that these be sent at our earliest convenience, and they would have been sent sooner had it not been for the fact that two holidays- Sunday and February 13th, intervened.

We are also enclosing statement covering the statutory fee for making these certified copies- amounting to $6.00.

Very truly yours,

JAMES SPOFFORD
Commissioner of Reclamation
By

Chief Clerk

JLA
Encs.

10415

BOTHWELL & POVEY

JAMES R. BOTHWELL — ATTORNEYS AND COUNSELLORS AT LAW — HARRY POVEY

WOODS BUILDING

TWIN FALLS, IDAHO

February 9, 1939

Mr. James Spofford
Commissioner of Reclamation
Boise, Idaho

Dear Sir: In re License #10415 Idaho Power Co.

We are advised by your office that license No. 10415 was issued on December 28, 1938 to the Idaho Power Company for 526 cubic feet per second of the water of Clear Lakes, with a date of priority of January 18, 1919, which license was issued pursuant to order of the commissioner of reclamation dated December 28, 1938.

As we may desire to take an appeal to the District Court from such order and the issuing of said license, we will ask you to kindly prepare and forward to us the certified copies necessary to be filed in the District Court as provided by I. C. A. Sec. 41-217, to-wit:

1. Protest of the City of Buhl against the issuing of such license filed with the department.
2. Report of the examination of the place of use of such water made under the authority of the Department of Reclamation.
3. Other documentary proof in relation to such use, which has been filed in the office of the department.
4. License No. 10415 issued to Idaho Power Company.
5. Order of Commissioner of Reclamation dated December 28, 1938.

The foregoing papers should be certified by the department as true copies.

We shall appreciate receiving these certified copies at your earliest convenience, and if you will advise us your charges for such copies, check to cover same will be mailed forthwith.

Very truly yours,

10415

Bothwell & Povey

By Harry Povey

HP-b

Acting

James Spofford xxxxxxx

xxxxxxxxxxxxx
C. A. Bottolfsen

January 10, 1939

Re: License No. 10415
Idaho Power Company.

Mr. Harry Povey,
Attorney-at-law,
Woods Building,
Twin Falls, Idaho.

Dear Sir:-

We have your letter of January 6th, in which you inquire as to the date on which the above numbered license was issued.

In checking our files we find that License No. 10415 was issued on December 28th, 1938, to the Idaho Power Company, for 526 cubic feet per second of the waters of Clear Lakes, with a date of priority of January 18, 1919.

We trust that this information is that which you request.

Very truly yours,

JAMES SPOFFORD
Commissioner of Reclamation
By

B:A

Acting Deputy Commissioner

10415

BOTHWELL & POVEY

JAMES R. BOTHWELL — ATTORNEYS AND COUNSELLORS AT LAW — HARRY POVEY

WOODS BUILDING

TWIN FALLS, IDAHO

January 6, 1939

Mr. James Spoffard
Commissioner of Reclamation
Boise, Idaho

Dear Sir: In re: City of Buhl Permit No. 10415

This will acknowledge receipt of letter of R. W. Faris enclosing copy of order granting license to the Idaho Power Company under the above permit. Will you please advise us the date on which the license was issued?

Thanking you for this information, we are

Very truly yours,

BOTHWELL & POVEY

By Harry Povey

HP-B

10415

PARIS MARTIN
(DECD)
PARIS MARTIN, JR.
ATTORNEYS AND COUNSELLORS AT LAW
407 NOBLE BUILDING
BOISE, IDAHO

RECEIVED
DEC 30 1938
Department of Reclamation

December 30, 1938

Permit No. 10415

State of Idaho
Department of Reclamation
Mr. R. W. Faris, Commissioner
Boise, Idaho

Dear Mr. Faris:

Thank you for your letter of December 29th, 1938, with enclosure. I have sent the same on to the City of Buhl.

With kindest personal regards.

Yours very truly,

Paris Martin, Jr.

PMJr:aw

10415

December 29, 1938

Peris Martin Jr.
Attorney-at-Law
Noble Building
Boise, Idaho

RE: PERMIT NO. 10415

Dear Sir:

We are inclosing herewith copy of an order granting license to the Idaho Power Company, holder of the above numbered permit.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

RWF:mh
Inc.

10415

December 29, 1938

Mayor
City of Buhl
Buhl, Idaho

RE: PERMIT NO. 10415

Dear Sir:

We are inclosing herewith copy of an order granting license to the Idaho Power Company, holder of the above numbered permit.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

RWF:mh
Inc.

10415

December 29, 1938

Botwell and Cove
Attorneys-at-Law
Twin Falls, Idaho

RE: PERMIT NO. 10415

Gentlemen:

We are inclosing herewith copy of an order granting license to the Idaho Power Company, holder of the above numbered permit.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

RWF:mh
Inc.

10415

December 29, 1938

J. A. Sherfey
City Attorney
Buhl, Idaho

RE: PERMIT NO. 10415

Dear Sir:

We are inclosing herewith copy of an order granting license to the Idaho Power Company, holder of the above numbered permit.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

RWF:mh
Inc.

10415

December 29, 1938

Re: Permit No. 10415.

THE IDAHO POWER COMPANY
Boise, Idaho

Gentlemen:

We are herewith enclosing License and Certificate of Water Right issued under the above numbered permit to appropriate the public waters of the State of Idaho. This license is issued in pursuance to my Order of December 28th, 1938.

The Department's Receipt No. 16587 for the $5.00 fee paid in connection with the beneficial use proof under this permit is also enclosed.

Very truly yours,

Commissioner of Reclamation

jl
Encl.

10415

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STATE OF IDAHO

DEPARTMENT OF RECLAMATION

IN THE MATTER OF THE PROTEST)
: ORDER
AGAINST ISSUANCE OF LICENSE) Permit No. 10415

Under date of June 29, 1914, WM. G. HAZZARD, whose post office address was Clear Lake, Idaho, made Application No. 15399 for permit to appropriate 1,000 second feet of water from Clear Lake and its feeders, in Gooding County, Idaho, for power purposes. Point of diversion was designated as being in Lot 7, Section 2, Township 9 South, Range 14 East, Boise Meridian, and North 54° 8' East, 1685.5 feet from the Southeast corner of the Southwest Quarter of Section 2, Township 9 South, Range 14 East, Boise Meridian. The point of use of such water was described as being at the foot of "Devil's Washboard" N. 81° 0' East, 576 feet from the Southeast corner of the Southwest Quarter of Section 2, Township 9 South, Range 14 East, Boise Meridian.

Under date of July 8, 1914, the above-mentioned application for permit was approved by the State Engineer and Permit No. 10415 was issued to the applicant. The time for completion of works and application of water to beneficial use was fixed in the permit as follows: One-fifth of the work to be completed before January 8, 1917; completion of works before July 8, 1919; beneficial use of water to be made on or before July 8, 1925.

Under date of March 31, 1919, an indefinite extension of time for completion of works was granted the permit holder, upon showing made by him to the effect that litigation was pending over which he had no control. Under date of March 3, 1926, the State Commissioner of Reclamation (successor to State Engineer) made and entered an order that the time for completion of works under said above-mentioned permit be extended to May 21, 1926, and that the time for beneficial use of water be extended to May 21, 1932. Under date of May 13, 1926, a still further extension of time for completion of works was made by the Commissioner of Reclamation to May 21, 1927, which automatically extended the time for proof of application of water to beneficial use.

Proof of completion of works was made May 21, 1927, and certificate issued June 1, 1927.

Several transfers of ownership of the said above-mentioned permit were

made as follows: (1) WM. G. HAZZARD and wife to BANKERS' TRUST COMPANY, a Utah corporation, dated July 16, 1937; (2) BANKERS' TRUST COMPANY to FIRST SECURITY TRUST COMPANY, dated July 31, 1933; (3) BANKERS' TRUST COMPANY and CENTRAL TRUST COMPANY to IDAHO POWER COMPANY, dated July 31, 1933.

Under date of March 12, 1937, the City of Buhl filed Application No. 25707 for permit to appropriate and divert 1,000 cubic feet per second of the waters of Clear Lake, in Gooding County, for power purposes. The Idaho Power Company protested the granting of the above-mentioned application, but after notice and hearing, the application was approved and on November 29, 1937, Permit No. 18554 was issued to the applicant.

On December 11, 1937, pursuant to notice given as provided by law, the Idaho Power Company filed with the Department of Reclamation of the State of Idaho its proof of application of water to beneficial use under Permit No. 10415. On the same day, the City of Buhl filed with the Department what was designated a "Statement and Protest" against "the statements made by the Idaho Power Company in the published notice of and intention to submit proof of application of water to beneficial use," and also "against the issuance of water license under said permit."

In its "statement and protest," the City set up six paragraphs or reasons in support thereof: (1) that the water in question was held by the City under permit No. 25707, issued March 12, 1937; (2) that the power company's permit No. 10415 had lapsed for failure of the company "to apply said water to a beneficial use under the terms of said permit and the statutes relating thereto," (3) that there is no water in Clear Lake in excess of the water covered by the City's permit No. 25707; (4) that said permit No. 25707 covers and includes all of the waters of Clear Lake; (5) that the use for which the water is to be applied (i.e., electrical power generation) is not a beneficial or public use; and (6) that a water license issued to the Power Company would deprive the City of the right to further comply with the provisions of its Permit No. 25707 and render the same subject to cancellation.

The law makes no provision for a hearing on protest against issuance of license, but upon receipt of protest, the respective parties were requested to furnish briefs in support of their contentions with reference to this matter. The brief of the protestant, City of Buhl, was received at this office on or about May 6, 1938, and that of the protestee at a somewhat later date.

Of the numerous grounds of protest urged by the protestant, only two seem pertinent to the situation here existing, viz: The status of Permit No. 18554 to the city of Buhl and the right of the Idaho Power Company, holder of Permit No. 10415, to make proof of application of beneficial use after the six-year limit fixed by Section 41-211, Idaho Code Annotated. With reference to the status of Permit No. 18554, City of Buhl, it seems only necessary to quote the statute with reference to priority which is as follows:

> "Section 41-106. Priority.--As between appropriators, the first in time is first in right."

In the case of Speer vs. Stephenson, 16 Idaho 707, 102 Pac. 365, the Supreme Court of this state defined a permit as follows:

> "Permit is not an appropriation of the public waters of state, but is the consent of state given in manner provided by law to construct and acquire real property. Permit gives applicant an inchoate right, which will ripen into a legal and complete appropriation only upon completion of works and application of water to a beneficial use."

Many other citations are submitted confirming the above-mentioned decision. It is true that Section 41-211 of the Code provides that proof of application of water to beneficial use in no case shall be more than six years from the date set for completion of works, but subsequent Section 41-213 contains the following provision "***provided, that whenever proof of the beneficial application of water shall be offered subsequent to the date stated in the permit, or in any authorized extension thereof, when such beneficial application shall be made, such proof shall be taken, and if satisfactory to the department of reclamation, a license shall be issued by the department the same as though such proof had been made before such date fixed for such beneficial application, but the priority of the right established by such proof shall not date back to the date of the application for the permit to which such right would relate under the provisions of this chapter, but shall bear a date which shall be subsequent to the date of such application, a time equal to the difference between the date set in such permit, or extension thereof, for such beneficial application of such water and the date of such proof***"

It is obvious that there is a conflict between the provisions of Section 41-211 and Section 41-213, with reference to the time of making proof of application of water to beneficial use, but the proviso contained in Section 41-213 must have been inserted by the Legislature for some purpose and if it has any purpose it is to provide specifically for the making of proof of application of water to beneficial use after the time set by the permit for completion of works.

It has long been the practice of this department to receive and approve applications for license after the six-year period fixed in the permit had expired. The brief of the Idaho Power Company cites as an example of this practice a case which is to be found in the files of the Department of Reclamation in Book 7 of Licenses, page 3638. In this case, application for permit was filed on August 4, 1913, proof of beneficial use was due March 6, 1914 and was not made until August 9, 1930, or more than 16 years late. In another more recent case, involving a project of considerable magnitude, the permit was dated December 1, 1911, proof of application of water to beneficial use due January 20, 1928, but not made until March 17, 1934, or a little over 12 years late. Many other similar instances might be quoted but the above are sufficient to establish the practice of this department.

Without going into details of the briefs of the respective parties, it is felt that from the proof offered by the permit holder, which is confirmed by the report of the examining engineer, on file in this department, the terms of the permit have been substantially complied with and that the permit holder is entitled to a license for the amount of water claimed in the permit, to-wit: 526 cubic feet per second, with a priority date of January 18, 1919, and it is so ordered.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of my office to be affixed this 28th day of December, 1938.

R. W. FARIS,
Commissioner of Reclamation

NOV 30 1938

BEFORE THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO,

R. W. FARIS, COMMISSIONER OF RECLAMATION

IN RE PERMIT NO. 10415.) BRIEF OF IDAHO POWER COMPANY

On December 11, 1937, pursuant to notice given as provided by law, Idaho Power Company filed with the Department of Reclamation of the State of Idaho its proof of application of water to beneficial use under Permit No. 10415. On the same date the City of Buhl filed with the Department what was designated a "Statement and Protest" against "the statements made by Idaho Power Company in the published notice of and intention to submit proof of application of water to beneficial use," and also "against the issuance of water license under said permit."

In its "statement and protest," the City set up six paragraphs or reasons in support thereof: (1) that the water in question was held by the City under Permit No. 25707, issued March 12, 1937; (2) that the Power Company's Permit No. 10415 had lapsed for failure of the Company "to apply said water to a beneficial use under the terms of said permit and the statutes relating thereto," (3) that there is no water in Clear Lake in excess of the water covered by the City's Permit No. 25707; (4) that said Permit No. 25707 covers and includes all of the waters of Clear Lake; (5) that the use for which the water is to be applied (i.e., electrical power generation) is not a beneficial or public use; and (6) that a water license issued to the Power Company would deprive the City of the right to further comply with the provisions of its Permit No. 25707 and render the same subject to cancellation.

In the brief filed by the City, the only points discussed were the first two points summarized above. Consequently, the Power Company will limit its answering brief to these same two propositions.

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Before proceeding to the argument, however, we desire to make the point, and call attention to the fact, that:

I.

THE PROTEST DOES NOT COMPLY WITH, AND IS INSUFFICIENT UNDER THE REQUIREMENTS OF THE STATUTE.

Section 41-217, Idaho Code Annotated, 1932, provides in part as follows:

> "41-217. Protest against license--Appeal from decision. - Any person desiring to protest against the statements made by the person or persons submitting proof of the beneficial application of water in the published notice of their intention to submit such proof, shall file a statement with the department of reclamation on or before the date set for such proof, stating clearly the reason for such protest, and stating the reason, if any, why a license should not be issued confirming the right claimed. Such protest shall be based solely upon the statements in such notice and shall be sworn to by such protestant.
>
> * * * * * * *"

It is thus apparent that any protest must be based upon and limited to the statements made by the permit holder in the notice of proof. The reasons for such a limitation may or may not be important, but the fact is that the legislature has by specific statute pointed out the grounds, and the only grounds, upon which a protest can be made.

In this case the notice of proof was on the printed form provided for that purpose by the Department of Reclamation, and contained the information required to be set forth therein by Section 41-211 of the statutes.

In accordance with Section 41-211, the notice stated (1) the name and address of the Power Company as permit holder; (2) that the use to which the water had been applied was electrical power generation; (3) that the amount of water so applied to beneficial use was 526 cubic feet per second, or so much thereof as is available; (4) the location of the power plant, works and place of use; (5) the name and designation of the works by which the

10415

water is diverted and conducted to the place of use; (6) that the right is based upon Permit No. 10415; that the source of supply was Clear Lake and its feeders, a tributary of Snake River; and that the priority which the user is prepared to establish is January 18, 1919. This latter date was computed and supplied by the Department of Reclamation, in accordance with Section 41-213 of the statutes, of which more will be said later.

It, therefore, appears that the legislature, in Sections 41-211 and 41-217 of the statutes, has not only set forth the nature of the facts which must be stated in the notice of proof, but has made those statements the sole basis upon which a protest can be founded. In other words, the protest is limited to a denial of some or all of the facts stated in the notice, and cannot be based upon outside or extraneous matters, - such as the standing of the permit under which proof is being made, or the existence of subsequent applications to appropriate water. An appropriate time and method exists to raise such questions, and they cannot be raised at the last minute in a protest against the issuance of a license at the time when proof of beneficial use is made. The reason for this is at once apparent when study is made of Section 41-213 of the statutes which provides for the issuance of licenses with delayed priority when proof of beneficial use is late, - which section of the law will be discussed in detail later on.

Of the six grounds for protest in the City's statement, only one is within the scope permitted by the statute, and that ground is not well founded in fact or in law. We refer to paragraph 5, in which the statement is made that "the use for which the Idaho Power Company is attempting to appropriate said waters * * * is not * * * a beneficial or public use." As stated in the notice of proof, the use in question is "electrical power generation," and the public and beneficial nature of such a use has long been recognized.

On this ground alone - that the statement and purported protest

does not comply with Section 41-217 of the statutes, it is submitted that the same should be rejected by the Department of Reclamation, and license should issue on Permit No. 10415.

II.

A SUBSEQUENT APPLICATION IS NO BASIS FOR OBJECTION TO THE ISSUANCE OF A LICENSE ON AN EARLIER EXISTING APPLICATION.

It is first argued by the protestant that all the water for which license is sought under Permit No. 10415 is held by the City under its subsequent Permit No. 25707, issued on March 12, 1937.

It is true, of course, that under Permit No. 10415, a certificate of completion of works was issued by the Department, in which the capacity of the works is stated as 526 second feet, and this is the same quantity for which proof of application to beneficial use has been made. Further, this quantity of water comprises the total present flow of Clear Lake and its feeders, and is all the water that is available for power or other purposes at the present time. It is likewise true that subsequent Permit No. 25707 has reference to the same water. But this is no different from the situation which has existed in numerous cases on every river in the state, where various applications have from time to time been filed with similar points of diversion, for the same water, from the same source of supply. In this situation it is axiomatic, as well as statutory, that "As between appropriators, the first in time is first in right." I.C.A. 1932, Sec. 41-106.

If, under the law, Idaho Power Company is entitled to the issuance of a license under its Permit No. 10415, the fact that one or more subsequent applications are on file is immaterial. The existence and status of the Company's Permit No. 10415, and the Certificate of Completion of Works issued thereunder, were at all times a matter of public record. The City had full

and legal notice of them, and of the statutes pertaining thereto. Application No. 25707 was filed for what it was worth under the law, and subject to whatever rights might exist under the Company's earlier and existing Permit No. 10415.

Even assuming that the point were one that could lawfully be raised as a ground for protest (and it is not, under Section 41-217 of the statutes), it is submitted that it contains no valid grounds for an objection to the issuance of a license under Permit No. 10415.

III.

THE COMPANY'S PERMIT NO. 10415
IS A VALID AND EXISTING PERMIT
IN THE DEPARTMENT OF RECLAMATION,
AND LICENSE SHOULD ISSUE UNDER
SECTION 41-213.

The second and principal point urged by protestant is to the effect that Permit No. 10415 of Idaho Power Company has lapsed for failure to comply with the statutes and "to apply the water to beneficial use under the terms of said permit and the statutes relating thereto." Again, we point out that this is not a statutory ground for protest under Section 41-217. It is submitted, however, that the contention is without merit.

Although protestant in its brief has cited a number of statutes, it has failed to mention the one section of the law which clearly governs the point in question. Section 41-213, I.C.A. 1932, provides in part as follows:

> "41-213. Issuance of License--Priority.-- * * * * whenever proof of the beneficial application of water shall be offered subsequent to the date stated in the permit, or in any authorized extension thereof, when such beneficial application shall be made, such proof shall be taken, and if satisfactory to the department of reclamation, a license shall be issued by the department the same as though such proof had been made before such date fixed for such beneficial application, but the priority of the right established by such proof shall not date back to the date of the application for the permit to which such right should relate under the provisions of this chapter, but shall bear a date which shall be subsequent to the date of such application, a time

equal to the difference between the date set in such permit, or extension thereof, for such beneficial application of such water and the date of such proof: * * * * *."

The above provision would seem to require little or no argument or discussion, as the meaning of the language used is clear and free from doubt. The said provision has been a part of Idaho's water legislation since the enactment of the present law in 1903 (Laws of 1903, page 223, Section 8), and the records of the Department of Reclamation are replete with cases in which the provision has been carried out in accordance with the clearly expressed legislative intent, and in accordance with the position of the Company now under discussion.

To cite a single example from among the numerous cases to be found in the files of the Department, we refer to Water License No. 9557 (Book 7, page 3638). In this case application for permit was filed on August 4, 1913. Proof of beneficial use was due on March 6, 1914, but was not made until August 9, 1930, - more than sixteen years late. Under the statute above referred to, license issued on November 10, 1930, with date of priority delayed and fixed as of December 24, 1929. - Other examples are Water License No. 1971, where proof of use was eight years late; License No. 2349, ten years late; and License No. 2631, nine years late.

When the Company notified the Department that it was prepared to make proof of use, the Department of Reclamation computed and inserted in the notice the date of priority (to-wit: January 18, 1919) which the Company was entitled to obtain and establish under the delayed priority proviso of Section 41-213 quoted above. This was in accordance with the Department's long established practice under the law in question, whereby delayed priority licenses have been granted on numerous occasions.

It is a familiar rule that the contemporaneous construction given a statute by the executive and administrative departments and officers charged with executing it, is entitled to grant weight, particularly when such construction has been acted upon for a long period of time, and when there has

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been no change made in the law by the legislature. Where rights have accrued under or in reliance upon such construction of a statute, as by the Power Company in this case, the rule obtains added force and weight.

In Swendig v. Washington Water Power Co., 265 U.S. 322, 68 L. ed. 1036 (affirming 281 Fed. 900), a patentee of land claimed that the prior permit of a power company to maintain a transmission line was revoked by the subsequent patent, such permission having been given subject to the rights of entrymen to obtain subsequent clear patents to land. But the Supreme Court of the United States held that the patentee made his entry subject to existing rights under the law and the construction placed thereon by the Department of the Interior. The court said:

> "The regulation is still in effect. The construction and application of the act so made and provided for have been followed since that time. If the meaning of the act were not otherwise plain, this interpretation would be a useful guide to the ascertainment of the legislative intention. It is a "settled rule that the practical interpretation of an ambiguous or uncertain statute by the executive department charged with its administration is entitled to the highest respect, and, if acted upon for a number of years, will not be disturbed except for very cogent reasons.' Logan v. Davis, 233 U.S. 613, 627, 58 L. ed. 1121, 1128, 34 Sup. Ct. Rep. 685."

In California v. Deseret Water, Oil & Irr. Co., 243 U.S. 415, 61 L. ed. 821, the United States Supreme Court commented upon the importance of preserving rights acquired and investments made in reliance upon existing construction of a statute, and said:

> "In the brief presented by leave of court on behalf of the United States it is set forth that the rule laid down in Re California, 28 Land Dec. supra, is still adhered to by the Land Department; that selections aggregating many thousands of acres have been made in reliance upon it, and that no doubt large expenditures of money have been made in good faith upon the selected lands. It is therefore urged that such construction has become a rule of property. In this situation we should be slow to disturb a ruling of the department of the government to which is committed the administration of public lands. McMichael v. Murphy, 197 U.S. 304, 49 L. ed. 766, 25 Sup. Ct. Rep. 460.

In People v. Southern Pacific Co., 290 P. 25, the California court held:

"* * *'The contemporaneous and practical construction of a statute by those whose duty it is to carry it into effect, while not controlling, is always given great respect. And a contemporaneous interpretation long acquiesced in by all persons who could possibly have an interest in the matter, has been held to be sufficient to justify a court in resolving any doubt it might have as tothe meaning of ambiguous language employed by the Legislature, in favor of sustaining such long unquestioned interpretation.' 23 Cal. Jr. 775. Furthermore, the Legislature has construed the constitutional amendment of 1910 as vesting in it the power and authority to fix rates of taxation upon street railways separate and apart from thoseimposed upon railroads. Not only did the Legislature of 1921 enact the King Tax Bill, but succeeding Legislatures have acquiesced in its operation by failing to take any action looking toward its repeal or to materially amend it. * * * *.

"It thus appears that the legislative, and a department of the executive, branch of our state government have, by direct affirmative action and long acquiescence, placed a construction upon the statute of 1921 sustaining its validity. In passing upon its constitutionality, we are not to ignore the contemporaneous construction placed upon it by these governmental agencies."

And the Washington court said, in State v. Rathbun, 256 P. 330:

"Primary supervision and control of the state's game is vested in the state supervisor of game and game fish, and in order to facilitate administration certain other state officers, with limited powers and jurisdiction, namely, county game commissioners and county game wardens, were provided for, and in the selection and appointment of these secondary officers the Legislature gave the counties through their authorized representatives, the power to recommend. This power is to nominate, and not to appoint. This has been the uniform executive construction since the act of 1913, covering a period of some 14 years. An executive construction is accepted generally by the courts, as persuasive, where the Legislature has silently acquiesced in such construction by failing to amend the particular act. State ex rel. Cowles v. Schively, 63 Wash. 103, 114 P. 901."

In State Board of Land Commissioners v. Ririe, 190 P. 59, the question before the Utah court was whether a statute, which provided that the board could invest its funds "in government, state, county, city, or school district bonds," permitted the Board to invest in bonds issued by a "town." In deciding that town bonds were legal investments under the law, the Utah court said:

"It has been the custom of the Land Board for more than fourteen years to invest funds in its custody in town bonds within this state. Such is a matter of public record, both in the Auditor's office and in the office of the State Land Board. The Auditor and the State Land Board are parts and parcels of the executive department of the state. This court, therefore, is authorized to and will take judicial notice of the acts and proceedings of the two offices. Comp. Laws Utah 1917, Sec. 7076.

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"The Legislature is presumed to know the construction placed upon the language of the act by both the Land Board and the State Auditor. Notwithstanding that fact, the Legislature has met biennially, and there have been three revisions or compilations of the statutes since the original enactment. Furthermore, the particular section has been amended by the Legislature in 1911, 1915, and 1919. At no time, apparently, has the Legislature been dissatisfied with the interpretation of the Land Board and the State Auditor, but has given its affirmative approval by the re-enactment of the section with full knowledge of the interpretation placed upon it. While it is true that the construction of a statute by the executive department is not binding upon the courts, it is, nevertheless, also true, and is so determined by the overwhelming weight of authority, that unless such construction does violence to the apparent intent of the language used it is entitled to serious consideration by the courts, and especially so if the statute has been in force for any great length of time and has been so construed. * * *."

Numerous other cases could be cited; and it is further submitted that our contention here, and the long-time construction of the law by the Department, are strictly in keeping with both the letter and spirit of the law, the language of Section 41-213 being clear and free from ambiguity.

Protestant cites Sections 41-211 and 41-212 of the statutes, and argues that these sections provide a definite time limit after completion of works within which proof of beneficial use must be made. Such a conclusion must either overlook or nullify the above-quoted provisions of Section 41-213.

It is a familiar rule of statutory construction that effect should be given to an entire statute and every part thereof, and that the various provisions should be read together so as to harmonize the whole and to arrive at the full legislative intent. Ingard v. Barker, 27 Ida. 124, 147 P. 293; Boise-Payette Lumber Co. v. Independent School Dist. No. 1, 46 Ida. 403, 268 P. 26. Certainly no such result is obtained from the contention of protestant in this proceeding, and such contention should not be upheld as it would render the quoted portion of Section 41-213 entirely without effect, and thus nullify the clearly expressed will of the legislature. Forsyth v. Selma Mines Co., (Utah), 197 P. 586.

Upon proper analysis, there is no conflict between the quoted provisions of Section 41-213, and those of Sections 41-211 and 41-212. A careful

reading of the language used indicates that Sections 41-211 and 41-212 do not set up a time limit within which proof of use must absolutely be made; on the other hand, they merely provide the limit of time which the Department itself may allow under Section 41-204 in endorsing the date when beneficial application of the water shall be made. Both the language used in Sections 41-211 and 41-212, and their relationship to 41-213, indicate that this construction and meaning were intended.

The wording of the above-quoted portion of 41-213 makes it clear that the six-year limitation contained in Sections 41-211 and 41-212 is not a limitation upon the time itself, but a limitation only upon the discretion delegated to the Department to give the date for making proof of use, and to grant extensions thereof. Thus a possible unconstitutional delegation of power was avoided, and the legislature itself provided in Section 41-213 the effect of failure to file proof within the time allotted by the Department.

In its argument protestant makes brief mention of the abandonment theory, although no mention is made of the applicable provisions of Section 41-216 which is the sole statutory basis for abandonment of water rights. This section provides that "* * * rights to the use of water * * shall be lost and abandoned by a failure for the term of five years to apply it to the beneficial use for which it was appropriated." As stated in Chill v. Jarvis, 50 Ida. 531, 298 P. 373, the abandonment period begins to run when the owner of a water right ceases to apply it to beneficial use. Conversely, the period cannot begin to run until such time as a definite right or duty to use the water (with the alternative of losing it if not so used) exists. When the time for completion of works under Permit No. 10415 was extended to May 21, 1927, the time for making proof of use was also extended for an additional year to May 21, 1933. It was, therefore, not until the latter date that the five-year abandonment period could begin to run, so that even under the abandonment theory the Company's rights under Permit No. 10415 would not have lapsed until

May 21, 1938. This was more than six months after beneficial use began and proof thereof was made.

Regardless of the application of the abandonment theory, it supports an interesting argument which entirely upholds the Company's right to license under Permit No. 10415. The five-year abandonment period provided for in Section 41-216, when read in connection with the delayed priority provisions of Section 41-413, must certainly result in setting up five years as being the minimum period of time in which the delayed-priority provisions of Section 41-213 are to be effective. In other words, a permit holder is entitled under the law to at least a five-year period within which he may obtain his license, the only penalty being a delayed priority to the extent of the time that this proof is late. In re Willow Creek (Ore.), 144 P. 505, Hutchinson v. Strickland (Ore.), 28 P. (2d) 225, and Hammond v. Johnson (Utah), 66 P. (2d) 894, it is held that there cannot be a forfeiture of an appropriation by nonuser short of the period prescribed by the statute; and as pointed out above, that period did not begin to run until May 21, 1933. Such a construction obviates any conflict which might otherwise exist between Sections 41-211 and 41-213, and should resolve any doubt as to the Power Company's right to license under Permit No. 10415.

Protestant in its brief quotes from several Idaho decisions, and from one case from Utah. The Utah case is inapplicable, however, as that state has no statute similar or even comparable to Section 41-213 of the Idaho Code. Likewise, the Idaho cases have no application in this proceeding, for the early Conant case (1893) was decided long prior to the adoption of Section 41-213, and in none of the later cases was the application of Section 41-213 before the court.

Before closing, may we direct attention to Sections 41-301 and 41-311, having to do with cancellation of permits. Under Section 41-301 a procedure is provided whereby a subsequent permit holder may seek the cancellation of a prior permit under certain circumstances. Section 41-311 authorizes the Department of

Reclamation to clear its records of permits under the same circumstances. What are these circumstances, upon which the legislature has authorized certain permits to be cancelled? It is significant that permits may only be cancelled where there has been a failure to commence work or to complete work within the time allotted therefor. Once work has been completed and a certificate of completion of works has been issued, the law does not provide for the cancellation of such a permit, although a subsequent permit holder may undoubtedly have his action in the courts and thereby obtain cancellation in proper cases. This procedure the protestant did not choose to follow, apparently being content to file its application No. 25707 for what it was worth under the law, and subject to the priority of the Company's existing Permit No. 10415.

Thus, the legislature has distinguished between permits before and after completion of works; has provided them with difference and respective standing; and has for each class of such permits provided a complete and different status and procedure. Before completion of works, a permit is subject to cancellation for failure to do the work in time, either at the instance of a subsequent permit holder (Section 41-301) or on the motion of the Department of Reclamation (Section 41-311). Even in such a case, however, it is submitted that the law is not self-executing, and that until a proper proceedings has been instituted, the permit in question remains in good standing.

On the other hand, after completion of works, the procedure for cancellation under the above statutes is not available, and the legislature has further provided, in Section 41-213, for the issuance of a delayed priority license in cases where application to use is not made within the time originally stated therefor by the Department or an extension thereof.

The Company's Permit No. 10415 is a permit of the latter class.

The statutes have been fully complied with, and license should therefore issue under the provisions of Section 41-213.

Respectfully submitted,

Hawley & Northwine.

R. E. Inman.

Attorneys for Idaho Power Company.

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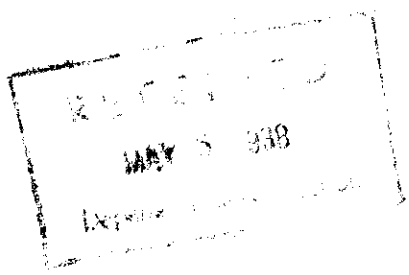
BOTHWELL & POVEY

JAMES R. BOTHWELL — ATTORNEYS AND COUNSELLORS AT LAW — HARRY POVEY

WOODS BUILDING

TWIN FALLS, IDAHO

May 4, 1938



Hon. R. W. Faris
Commissioner of Reclamation
Boise, Idaho

Dear Sir:

In re: Permit No. 10415 Idaho Power Co. - Protest of City of Buhl

Enclosed herewith please find brief of protestant in connection with its protest against proof of beneficial use under the above permit.

Copies of the brief have been forwarded to Messrs. Hawley & Worthwine and Arthur C. Inman, attorneys for Idaho Power Company.

Very truly yours,

BOTHWELL & POVEY

By Harry Povey

HP:T

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BOTHWELL & POVEY

JAMES R. BOTHWELL — ATTORNEYS AND COUNSELLORS AT LAW — HARRY POVEY

WOODS BUILDING

TWIN FALLS, IDAHO

December 27, 1937.

Mr. R. W. Faris
Commissioner of Reclamation
Boise, Idaho

Dear Sir:

RE: PERMIT No. 10-415

Receipt is acknowledged of copy of your letter to J. H. Sherfy, city attorney of Buhl, advising that the City of Buhl may have an opportunity to file a brief on the questions involved by the protest of the City of Buhl.

Mr. Sherfy is away for a few days and has requested us to reply to your letter and state that we are working on a brief on behalf of the City of Buhl. We will forward it to you and serve copies on the attorneys for the Idaho Power Company at an early date.

Very truly yours,

BOTHWELL & POVEY

By James R. Bothwell

JRB:JLB

RECEIVED
DEC 29 1937
Department of Reclamation

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RECEIVED
DEC 20 1937
Department of Reclamation

J. H. SHERFEY
LAWYER
GRIFFIN BUILDING
BUHL, IDAHO

December 16, 1937

Department of Reclaimation
Boise, Idaho

Dear Mr. Paris

I have your letter of the 16th relative to the protest of the city of Buhl, as to the proof of beneficial use of Idaho Power Company under permit number 10415.

I will be out of the state untilafter the first of the year and you might address Judge Bothwell of anything that comes up in the meantime. I confered with Mr. Bothwell about the subject of your letter and he is now engaged in the prepration of a brief I request by you.

I realize the situtation makes no provision for a hearing but it would not naturally follow, that the commissioner should make such rules as he deems expedient for the disposition matter of proof and protest before him. The matter is to be considered by the commissioner and would mostly be governed by the records of your office.

At the time Mr. Bothwell and I perpared the protest. The city clerk was abscent which we did not know until we had the paper perpared for that reason you will notice the the filed copy does not contain the signature of the city Clerk or the seal of the City. I would lke to request that you return this to Mrs Yeamens, the city clerk, that she may attach the seal thereto, however, sonce the Mayor was authorized by the council I do not know if it was fatal but might save some argument if that was done.

I will instruct her her to return it to you, if you will do this.

Very truly yours.

J. H. Sherfey
Attorney

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December 16, 1937

J. H. SHERFEY
City Attorney
Buhl, Idaho

Dear Sir:

I have your protest in connection with the submission of proof of beneficial use of water to the Idaho Power Company under Permit No. 10415, and note your request that a time and place be fixed by the Department of Reclamation for hearing of this protest.

The law makes no provision for a hearing in such cases, though I assume that the Commissioner may adopt any reasonable procedure he may deem necessary or desirable to ascertain the facts and secure the information necessary to enable him to arrive at a conclusion or decision with reference to the matter.

As I understand the situation, there is no question of fact involved in this case and the only thing before the Commissioner is the construction of the law with reference to proof of application to beneficial use as contained in Section 41-213 of the Code, and particularly as to the proviso therein contained with reference to making proof more than six (6) years after the date fixed in the application.

I would greatly appreciate a brief from you on this question with whatever citations you may have to submit.

Yours very truly,

R. W. FARIS,
Commissioner of Reclamation

RWF/ei
cc to Bothwell & Povey, Twin Falls
Idaho Power Company, Arthur C. Inman, Attorney, Boise

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December 14, 1937

H. L. SENGER
c/o Idaho Power Company
Boise, Idaho

Dear Mr. Senger:

I am enclosing herewith carbon copies of letters to this Department from Mr. T. R. Newell of the United States Geological Survey relative to water measurements recently made at the power plants located at the Upper Salmon Falls and the Clear Lakes locations, respectively.

Trusting that this will be of interest and applogizing for the delay in transmittal, I am, with the best of seasonal greetings,

Yours very truly,

Fred A. Tolman
Field Engineer

fat/ci

10415

BEFORE THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO,

R. W. FARIS, COMMISSIONER OF RECLAMATION

IN THE MATTER OF THE PROTEST OF THE CITY OF BUHL, IDAHO, IN CONNECTION WITH THE SUBMISSION OF PROOF OF BENEFICIAL APPLICATION OF WATER OF IDAHO POWER COMPANY UNDER PERMIT No. 10415.

BRIEF OF PROTESTANT

S T A T E M E N T

The facts pertinent to the question presented by protestant are as follows:

On January 18, 1919, Permit No. 10415 was issued to W. C. Hazzard, and the Idaho Power Company, by mesne conveyances, acquired the rights and privileges of said W. C. Hazzard under said permit on or about the 16th day of July, 1927. Idaho Power Company gave notice that on December 11, 1937, at 1220 Idaho Street, Boise, County of Ada, State of Idaho, before M. E. Hughes, Notary Public, that proof would be submitted of the application to beneficial use of 526 cubic feet per second of the waters of Clear Lake and its feeders in accordance with the terms and conditions of Permit No. 10415 heretofore issued by the State Engineer of the State of Idaho with date of priority January 18, 1919. City of Buhl, as the holder of permit No. 18554 issued upon application No. 25707, authorizing the appropriation of 1000 cubic feet per second of the waters of Clear Lake, a tributary of Snake River, have filed written protest protesting against the statements of Idaho Power Company contained in said notice, the submission of proof of beneficial use under said Permit No. 10415 and the issuance of water license.

A R G U M E N T

The principal grounds of protest are based upon the following paragraphs contained in said protest, to-wit:

> "1. That said Permit No. 10415 was issued on the 18th day of January, 1919 to W. C. Hazzard, and that the Idaho Power Company, a corporation, by mesne assignments acquired the rights and privileges of said W. C. Hazzard under said permit on or about the 16th day of July, 1927, and ever since said date have been and now are the owners of said permit together with the rights and privileges thereunder; that all of the water sought to be put to a beneficial use, and for which the Idaho Power Company is seeking to make proof of such beneficial use under and by virtue of said notice, is held by the protestant the City of Buhl thereunder and by virtue of Permit No. 25707 issued to said City of Buhl on March 12, 1937.
>
> 2. That Permit No. 10415 was issued to W. C. Hazzard and subsequently assigned by mesne assignments to the Idaho Power Company and is null and void for the reason that the same has lapsed for failure of the Idaho Power Company or any person holding said permit to comply with the law relative to the development of said project and to apply said water to a beneficial use under the terms of said permit and the statutes relating thereto."

With respect to proof of application of water to beneficial use, I. C. A. Sec. 41-211 provides as follows:

> "On or before the date set for the beneficial use of waters diverted under the provisions of this chapter, which in no case shall be more than six years from the date set for the completion of any canal or other works designed to divert and conduct the public waters of the state to a place of use, or the date for the enlargement or extension or the completion of works for such purpose, the person or persons using such water shall submit proof that they have used such water for the beneficial purpose for which the diversion of such water was intended. * * * * * *"

The remainder of the foregoing section is devoted to the procedure to be followed.

I. C. A. Sec. 41-212 provides:

> "Whenever a less period of time than the maximum prescribed in the preceding section has been granted by the Department of Reclamation for making proof of beneficial use, upon a satisfactory showing being made by the permit holder, the Department can extend the time

for making such proof of beneficial use, but in no case shall such extension or extensions, including the original time granted, exceed the maximum prescribed in the preceding section. The Department shall grant no extension unless the application therefor be filed with it prior to the date upon which the proof of beneficial use was required to be made under the original terms of the permit, or within thirty days after such date."

Proof of completion of works under Permit No. 10415 was made on May 21, 1927, and an order was made by the Department of Reclamation accepting completion of works on June 1, 1927. The proceedings now before the Department are the first proceedings with reference to proof of beneficial use.

The language of the above quoted statutes is so plain and emphatic to our minds that it appears obvious that the Commissioner of Reclamation is without jurisdiction or authority to consider proof of beneficial use of water under a permit or to grant a water license at any time after six years from the date set for the completion of works or more than six years after the time for completion of works as extended by the Commissioner of Reclamation. I. C. A. Sec. 41-212 provides for extension of time for the submission of proof of application of water to beneficial use, and in order that extensions may not be granted which exceed the six-year period, it is provided that

"but in no case shall such extension or extensions, including the original time granted, exceed the maximum prescribed in the preceding section,"

namely, the six-year period. Under the permit now under consideration, proof of completion of works having been made and accepted on June 1, 1927, the time within which proof of beneficial use of water under said permit could be made expired on June 1, 1933, four and one-half years prior to the time fixed in the notice given by Idaho Power Company of the time and place for hearing proof of beneficial use.

It was obviously the intention of the Legislature, in limiting the time within which proof of beneficial use of water under a permit issued by the Department of Reclamation or its predecessor the State Engineer, to prevent applicants from securing permits and completing the work thereunder, and then not putting the water to a beneficial use and in this manner preventing others from doing so. The failure of Idaho Power Company to put such water to beneficial use and to make proof thereof within the six-year period resulted in an abandonment of the permit, and the jurisdiction and authority of the Commissioner of Reclamation to consider such proof or to issue water license based thereon terminated upon the expiration of the six-year period, which in this case was June 1, 1933. This thought is clearly expressed in Sowards v. Meagher (Utah), 108 Pac. 1112, 1117, where the Court refused to approve a permit for the irrigation of certain lands which at the time of making application were in an Indian reservation but later withdrawn therefrom. The Court said:

> "In other words, if the proposed appropriator is not able to complete and finally establish his appropriation by applying the water to, and using it for, the beneficial purpose for which it was proposed to be appropriated, either by himself or through the agency of some user, his appropriation fails. He may not file his application, construct his works, and then hold the water and wait for something to happen. He cannot withhold the water from the proposed beneficial use. He must not only be diligent in constructing the works, and in making the diversion, but he must also be reasonably diligent and expeditious in making application of the water to the beneficial use for which the appropriation was proposed, else he loses his inceptive right. His appropriation will be measured by the quantity of water actually used for the proposed beneficial purpose."

The use of reasonable diligence in applying water to beneficial use after construction of works of diversion has always

been the rule in this state prior to the enactment of the statutes above referred to. As early as 1893 the Supreme Court, in Conant v. Jones, 3 Ida. 606, 612, stated as follows:

> "The question arises as to the diligence to be exercised in the application of the water to the intended use. Section 3161 of the Revised Statutes of 1887 declares the diligence necessary to be exercised in conducting the water to the point of intended use after the location of the same; but the law is silent as to the diligence to be exercised in making application of the water appropriated.
>
> The appropriator would no doubt be entitled to a reasonable time in which to get his land in cultivation and to make such application. If that be true, it follows that what constitutes reasonable time is a question of fact dependent upon the circumstances of each particular case. No inflexible rule should be made by which to decide what constitutes a reasonable time in this matter. We are of the opinion that a person who complies with the law as to locating and conducting the water to the point of intended use has such time as he may need, or require, to make application of such water to the intended use, such time at least, as is reasonable under all of the circumstances of the case."

In Bennett v. Nourse, 22 Ida. 249, 257, decided in 1912, the Court stated:

> "It is the established rule of decision in this state that an appropriator of water for irrigation purposes, after conducting the water to the point of intended use, has a reasonable length of time to apply it to such intended use (see Conant v. Jones, 3 Ida. 602, 32 Pac. 250), and we think a quarter of a century is more than a reasonable time for that purpose, and from all of the evidence the court erred in granting Laura Ake more than eighty inches of water, which right should date March 31, 1885."

See also Hall v. Blackman, 8 Ida. 272.

In 1903 the Legislature, by the enactment of Section 7, House Bill No. 146, 1903 Session Laws, page 230, placed a limitation upon the time within which proof of beneficial use might be made, and provided that the date set for beneficial use

> "in no case shall be more than four years from the date set for the completion of any canal or other works designed to divert and conduct the public waters of the state to a place of use, or the date for the enlargement or extension or the completion of works for such purpose."

In 1911 the foregoing act was amended by Chapter 36, 1911 Session Laws, page 134, to extend the limitation to six years. At the same session, Chapter 35, 1911 Session Laws, page 133, was enacted, relating to the allottment of the waters of streams by the district court and providing that where diversion works are capable of diverting more water than is applied to a beneficial purpose at the time such rights are adjudicated, that the court shall only adjudicate the water then actually beneficially applied and shall ascertain the amount of water which can be diverted through such works in excess of such quantity beneficially applied, and shall set a time when such amount shall be applied to the beneficial purpose for which it is intended

> "which time shall not exceed six years from the date of the decree issued by such court under such adjudication."

By Chapter 94, 1915 Session Laws, page 216, the section relating to proof of beneficial use was amended, retaining the six-year limitation provision, and making provision also for irrigation systems covering more than 25,000 acres, and limiting the proof of beneficial use under such systems to a period of ten years. The last amendment became I. C. A. Sec. 41-211.

With reference to an irrigation system exceeding 25,000 acres, and referring to the amendment above described, it is stated in Vineyard Land & Stock Co. v. Twin Falls Salmon River Land & Water Company, 245 Federal 9:

> "Under a project like this, ten years is allowed within which to make the diversion and proof thereof for a beneficial use. The appropriation is contingent upon the use, of course, but in the larger projects the appropriation speaks as of the date of the license, though if not applied to a beneficial use within ten years, it lapses."

It will thus be seen that since 1903 a definite time has been fixed by statute for the establishment of proof of beneficial use, superseding the rule of reasonable diligence.

The appropriation of water must be for some useful or beneficial purpose, and when the appropriator or his subcessor in interest ceases to use it for such purpose, the right ceases. I. C. A. 41-104. Even after a water right has been acquired by permit or otherwise, the rights to the use of such water shall be lost and abandoned by a failure for the term of five years to apply it to the beneficial use for which it was appropriated, and when right to the use of water shall be lost through non-use or abandonment, such rights to such water shall revert to the state and be again subject to appropriation under the statutes. I. C. A. 41-216. It is thus apparent that after the works of diversion are completed, the water must be put to a beneficial use within the six-year period and proof thereof made within that time. If it is not made within that time, the jurisdiction and authority of the Commissioner of Reclamation to consider the proof and issue a water license ceases, the rights under the permit are forfeited and considered abandoned and the water is subject to appropriation by other persons. In the instant case, the Idaho Power Company having failed for over ten years to submit proof of beneficial use, its rights under the permit have lapsed and have become forfeited. The authority and jurisdiction of the Commissioner of Reclamation to consider proof of beneficial use or to issue water license ceased in 1933, and the water sought to be appropriated under that permit became subject to appropriation and subject to the rights of the City of Buhl under the permit issued upon application No. 25707.

As stated in Washington State Sugar Co. v. Goodrich, 27 Ida. 26:

> "The extent of the permit of the state is measured by the use of the water under the conditions and limitations of the permit. A failure to put the water to a beneficial use or to comply with the conditions of the permit, is an abandonment of the use, and this would be true whether or not there was a statute containing such a provision."

We respectfully submit that under the provisions of I. C. A. Secs. 41-211 and 41-212, the Commissioner of Reclamation should refuse to accept or consider the proof of beneficial use under said Permit No. 10415, and should refuse to issue water license under said permit.

Respectfully submitted,

James R. Bothwell

Harry Povey

Residing at Twin Falls, Idaho

J. A. Sharpe

City Attorney, residing at Buhl, Idaho.

ATTORNEYS FOR PROTESTANT

10415

IDAHO POWER COMPANY

BOISE, IDAHO

December 11, 1937.

RECEIVED
DEC 11 1937
Department of Reclamation

Commissioner of Reclamation,
State House,
Boise, Idaho.

Dear Sir:

In accordance with your notification of November 30th with reference to proof of application of water to beneficial use under Idaho Power Company Permit No. 10415, I transmit herewith deposition of holder and depositions of two independent witnesses, together with proof of publication of notice in five issues of the Gooding Leader.

Statutory fee in the amount of $5.00 is also enclosed herewith.

Very truly yours,

A. C. Inman

A. C. Inman,
Attorney.

ACI/B
Enc.

10415

RECEIVED
DEC 11 1937
Department of Reclamation

BEFORE THE DEPARTMENT OF RECLAMATION

of the

STATE OF IDAHO

IN THE MATTER OF THE PROTEST OF THE CITY OF BUHL, IDAHO, IN CONNECTION WITH THE SUBMISSION OF PROOF OF BENEFICIAL APPLICATION OF WATER OF IDAHO POWER COMPANY UNDER PERMIT No. 10415.	STATEMENT AND PROTEST BY CITY OF BUHL

TO: THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO, to R. W. FARIS, Commissioner of Reclamation; M. E. HUGHES, Notary Public; and to IDAHO POWER COMPANY:

You and each of you will please take notice that the City of Buhl, a municipal corporation, hereby protests against the statements made by Idahl Power Company in the published notice of and intention to submit proof of application of water to beneficial use under the terms and conditions of permit No. 10415 heretofore issued by the State Engineer of the State of Idaho, which proof, according to the published notice, is to be submitted before M. E. Hughes, Notary Public, on the 11th day of December, 1937 at 10:00 o'clock A. M., at 1220 Idaho Street, Boise, Ada County, State of Idaho, said protest being made under the provisions of Idaho Code Annotated, Section 41-217; and also protests against the issuance of water license under said permit, and in support of said protest said City of Buhl, as protestant, states as follows:

That said protestant hereby protests against all of the statements contained in said notice, and objects to the hearing or the submission of proof of beneficial use under said permit for the following reasons, to-wit:

1. That said Permit No. 10415 was issued on the 18th day of January, 1919 to W. C. Hazzard, and that the Idaho Power Company, a corporation, by mesne assignments acquired the rights and privileges of said W. C. Hazzard under said permit on or about the 16th day of July, 1927, and ever since said date have been and now are the owners of said permit together with the rights and privileges thereunder; that all of the water sought to be put to a beneficial use, and for which the Idaho Power Company is seeking to make proof of such beneficial use under and by virtue of said notice, is held by the protestant the City of Buhl thereunder and by virtue of Permit No. 25707 issued to said City of Buhl on March 12, 1937.

2. That Permit No. 10415 was issued to W. C. Hazzard and subsequently assigned by mesne assignments to the Idaho Power Company and is null and void for the reason that the same has lapsed for failure of the Idaho Power Company or any person holding said permit to comply with the law relative to the development of said project and to apply said water to a beneficial use under the terms of said permit and the statutes relating thereto.

3. That this protestant protests against the issuance of said certificate or any water license or right to appropriate or use any of the water of Clear Lakes of Gooding County, Idaho, and its feeders under said permit No. 10415 or any extension thereof, for the reason that there is no water in said Clear Lakes or its feeders in excess of the water covered by the permit of the protestant herein, being No. 25707 issued to the protestant by the Department of Reclamation on March 12, 1937, and which permit is in full force and effect; and that protestant has fully and completely complied with all of the terms, conditions and provisions of said permit and the statutes relating thereto.

4. That the permit, No. 25707, issued to the City of Buhl, covers and includes all of the waters of Clear Lakes and its feeders.

5. That the use for which the Idaho Power Company is attempting to appropriate said waters from said place under and by virtue of said notice is not to be applied to a beneficial or public use.

6. That is said Idaho Power Company is permitted to use and appropriate said water under its said permit, and if a water license is issued therefor, the said protestant will be deprived of the right to further comply with the provisions of its said permit and render the same subject to cancellation, to its irreparable damage and injury.

WHEREFORE, protestant prays that an order by made by the Department of Reclamation fix a time and place for the hearing of this protest, and that after such hearing the Department of Reclamation refuse to issue a water license to said Idaho Power Company based upon said Permit No. 10415.

Dated this 10th day of December, 1937.

CITY OF BUHL

(SEAL)

By _____
Mayor

Attest:

_____
Clerk

_____

_____
Residing at Twin Falls, Idaho

_____
City Attorney,
Residing at Buhl, Idaho.

ATTORNEYS FOR PROTESTANT

10415

STATE OF IDAHO)
) ss.
County of Twin Falls)

GAN L. THOMPSON, being first duly sworn, deposes and says:

That he is the duly elected, qualified and acting Mayor of the City of Buhl, Idaho, the above named protestant; that he has read the foregoing protest and statement and knows the contents thereof, and that he believes the same to be true.

Gan L. Thompson

Subscribed and sworn to before me this 10 day of December, 1937.

Notary Public for the State of Idaho, residing at Buhl, Idaho

(Seal)

Service of the foregoing protest and statement admitted this 11th day of December, 1937, by receipt of copy thereof.

Idaho Power Company
by R. B. Smith.

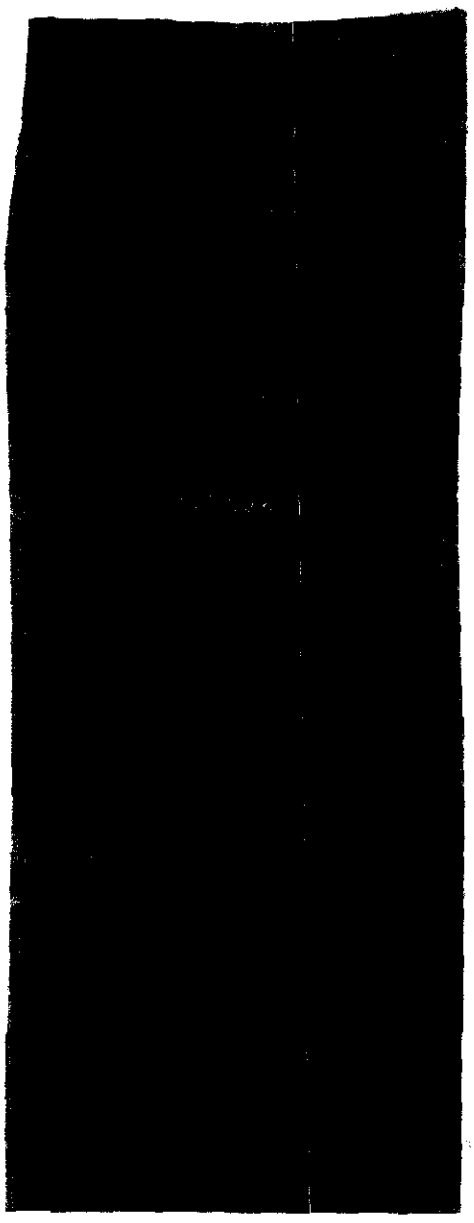
Service of the foregoing protest and statement admitted this _____ day of December, 1937, by receipt of copy thereof.

_____

Service of the foregoing protest and statement admitted this _____ day of December, 1937, by receipt of copy thereof.

_____

RECEIVED
DEC 11 1967
Department of Reclamation



PUBLISHER'S AFFIDAVIT

COUNTY OF GOODING, }
STATE OF IDAHO } ss.

F. F. Swan, being first duly sworn, deposes and says that he is Printer, of The Gooding Leader, a newspaper of general circulation in Gooding County, Idaho, published weekly in the City of Gooding, in said County and State; that said newspaper has been published in said county uninterruptedly and continuously for more than seventy-eight consecutive weeks prior to the first publication of the attached notice; that a notice, of which the annexed is a true copy, was published in the said newspaper for at least five consecutive issues, commencing with the issue dated Nov. 11, 1937 and ending with the issue dated Dec. 9, 1937 in the regular and entire issue of said newspaper and not in any supplement thereof.

F. F. Swan
Affiant's Signature.

Subscribed and sworn to before me this 11th day of Dec., 1937.

O. T. Patterson
Notary Public.
Residing at Gooding, Idaho.

10415

Form 16.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO.

RECEIVED
DEC 11 1937
Department of Reclamation

PERMIT NO. 10415

Proof of Application of Water to Beneficial Use

Deposition of Holder

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. K. M. Robinson, age 42, Boise, Idaho; President & General Manager, Idaho Power Company, P. O. Box 770, Boise.

Ques. 2. If acting in behalf of corporation, state its name, principal place of business (if a foreign corporation, give name of postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. Idaho Power Company; principal place of business in Idaho at 1220 Idaho St., Boise, Idaho; President & General Manager.

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. Permit 10415, dated July 8, 1914; priority to be established January 18, 1919.

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Clear Lake and its feeders, a tributary of Snake River; point of diversion in Lot 7, Sec. 2, T. 9 S., R. 14 E., B. M. North 54° 08' East 1685.5 feet from southeast corner of Southwest Quarter said Sec. 2, in Gooding County, Idaho.

Ques. 5. Describe your works of diversion, and state amout of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use.

Ans. Concrete and rock dam, concrete spillway, open canal, concrete intake, 7' 6" steel pipe line to power house, all located on property of Idaho Power Company. Works and pipe capable of diverting and conveying at least 526 cfs. to place of use.

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation name each subdivision in which used, and number of acres in each subdivision that have actually been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Water used for generation of electrical power at foot of what is known as Devil's Washboard falls, - North 81° 00' East 576 feet from Southeast corner of Southwest Quarter of Sec. 2, T. 9 S., R. 14 E., B. M.

Ques. 7. If for other than for irrigation purposes; state how applied, amount of horse power generated, etc.

Ans. Water applied through one 5500 h.p. horizontal turbine direct connected to one electrical generator capable of producing 2250 kw of electrical energy.

Ques. 8. What is the minimum amount of water required for the purpose specified above?

Ans. All water available up to 526 cfs.

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans. Original permit issued to Wm. C. Hazzard and transferred to Idaho Power Co. by deeds as shown by record of Permit 10415 in Dept. of Reclamation.

Ques. 10. State when, how, in what amount and to what extent the water diverted under above mentioned permit has been used.

Ans. Water diverted under Permit 10415 has been used for generation of electrical power since on or prior to Nov. 1, 1937; all water available, approximately 518 cfs., has been so used, but said quantity was insufficient to develop full capacity.

Ques. 11. State when, how, in what amount and to what extent waters other than those diverted under the above mentioned permit have been diverted and applied to beneficial use upon the lands herein described. Give full particulars regarding such other appropriations and rights claimed thereunder.

Ans. .....

(Sign) T. M. Robinson

I hereby certify that the foregoing testimony was read to the above subscribed before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Boise, County of Ada, State of Idaho, on this 11th day of December, A. D. 19 37.

M. L. Hughes

Notary Public, residing at Boise, Idaho

My commission expires March 27, 1940

10415

Form 17

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

RECEIVED
DEC 11 1937
Department of Reclamation

PERMIT NO. 10415

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. W. L. Gorton, Engineer, Box 1134, Boise, Idaho.
Age 56; 1409 North 18th Street, Boise, Idaho.

Ques. 2. Are you acquainted with Idaho Power Company, the holder of Permit No. 10415? How long have you known him and where does he reside?

Ans. Yes, 18 years, 1220 Idaho Street, Boise, Idaho.

Ques. 3. Have you read or heard read said Permit No. 10415, and are you familiar with its provisions and conditions?

Ans. Yes - Yes

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Clear Lakes, Diversion near Syster ranch house in Gooding County. Works consist of dam, spillway and headworks at entry of steel pipe line. Power plant and tail race discharging into Snake River.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. Approximately 550 sec. ft. for present dam. 500 sec. ft. estimated being carried at time of inspection.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each sub-division in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvement which have been made as a direct result of said use.

Ans. Water is used for power generation. Power is distributed in Southern Idaho by means of transmission and distribution lines of the Idaho Power Company.

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent

Ans. Water is applied to turbine which drives a generator. See answer to Question 5 for extent of application.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. Not for irrigation.

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No.

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. Examination of plant and works on December 5, 1937. Five hundred second feet estimated being applied at time of examination.

(Signed) W. L. Parton

I hereby certify that the foregoing testimony was read to the above subbscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Boise, County of Ada, State of Idaho, on this day of 11th of December, A. D. 19 37.

M. D. Hughes
Notary Public.

My commission expires March 27, 1940 Residing in Boise, Idaho

10415

DEC - 11 - 37

Form 17

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

RECEIVED
DEC 11 19[illegible]
Department of Reclamation

PERMIT NO. 10415

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Myron Swendsen, Whitney Bench, Age 46, Engineer, Box 156, Boise, Idaho.

Ques. 2. Are you acquainted with Idaho Power Company, the holder of Permit No. 10415? How long have you known him and where does he reside?

Ans. Yes, 18 years, 1220 Idaho Street, Boise, Idaho.

Ques. 3. Have you read or heard read said Permit No. 10415, and are you familiar with its provisions and conditions?

Ans. Yes - Yes

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water frrom point of diversion to place of use.

Ans. Clear Lakes and tributaries. Place of Diversion about 1/2 mile above where outlet of Clear Lakes flows into Snake River in Lot 7 of Section 2, T. 9 S., R. 14 E., B.M. Diversion works consists of dam, spillway, pipe line, power plant and tailrace returning water to Snake River.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. Works will safely convey in excess of 600 cfs to place of use. I have seen approximately 515 cfs conveyed to point of use.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each sub-division in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvement which have been made as a direct result of said use.

Ans. Water is used for generation of power at the power house located in Lot 7 of Section 2, T. 9 S., R. 14 E., B.M. Improvements resulting from said use consist of transmission and distribution system for distributing electrical energy to users.

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent

Ans. Water has been used for power purposes for generation of electrical energy. At the time I made examination (Dec. 5, 1937), approximately 515 cfs of water was being used under a static head of 79 ft. and plant was delivering 2000 kilowatts. Previous records show that the plant has been operated under a load of 2200 kilowatts.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. No irrigation.

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No.

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. See answer to Question 7. I visited the plant and made examination of it under operation on December 5, 1937.

(Signed) Myron Burandsen

I hereby certify that the foregoing testimony was read to the above subbscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Boise, County of Ada, State of Idaho, on this day of 10th December, A. D. 19 37.

M. D. Hughes
Notary Public.
Notary Public residing at Boise, Idaho

My commission expires March 27, 1940

10415

Form No. 22-B

State of Idaho

DEPARTMENT OF RECLAMATION

BOISE

INSTRUCTIONS

PROOF OF BENEFICIAL USE OF WATER

BOISE, IDAHO,

November 30, 1937

M. E. Hughes, Notary Public
1220 Idaho Street
Boise, Idaho

DEAR SIR:

I enclose herewith the following forms to be used in connection with proof of beneficial use of water under Permit No. 10415

DEPOSITION OF PERMIT HOLDER,
DEPOSITIONS OF TWO WITNESSES.

In submitting this proof the following instructions should be CAREFULLY followed out, since failure to do so may result in the loss of rights:

1. On December 11, 1937, the date set for proof, the enclosed forms (one for permit holder and one each for two disinterested witnesses) should be filled out and sworn to, at Boise, Idaho before M. E. Hughes, Notary Public.

2. When the depositions have been taken they should be mailed to this office, together with affidavit of publication of notice.

When these have been received, together with report of the examining engineer, if everything is properly executed, you will be further advised as to fees due, etc., before certificate is issued.

Yours truly.

R. W. FARIS
Commissioner of Reclamation.

10415

F. F. Swan
Editor and Publisher

High Class
Commercial Printing

The Gooding Leader

GOODING COUNTY SEAT NEWSPAPER
ESTABLISHED 1908
GOODING, IDAHO

10415

RECEIVED
NOV 13 1937
Department of Reclamation

Nov. 13,1937

Mr. R. W. Faris,
Commissioner of Reclamation,
Boise, Idaho,

Dear Sir:-

This letter is to acknowledge receipt of Idaho Power Company notice for publication in Gooding Leader, starting November 11. We started publication November 11 and under separate cover we are mailing you copy of that issue. Thanking you, we are

Very truly yours,

Gooding Leader,

By F. F. Swan

10115

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

RECEIVED
NOV 13 1937
Department of Reclamation

Boise, Idaho, November 12, 1937.

Mr. R. W. Faris,
Commissioner of Reclamation,
Boise, Idaho.

Dear Mr. Faris:-

Pursuant to your request a trip was made to Clear Lakes hydro-electric plant near Buhl for the purpose of measuring the discharge in head-race channel leading from Clear Lakes to feeder pipe intake. Mr. Tolman of your office accompanied and secured observations of lake levels, forebay levels, tail race levels and plant operation during period of discharge measurements.

On November 9, 1937, the flow was measured in the head race channel at a point approximately 250 feet upstream from the feeder pipe intake and 100 feet downstream from lake outlet proper. Measuring conditions were not good account roughness of section and angularity of current. The measurement was started at 1:15 p.m. and completed at 3:10 p.m.; discharge, 518 second-feet. The water level in the lake above rose slightly during the measurement as shown by Mr. Tolman's observations. (Mr. Tolman thought slight rise of 0.05 foot probably due to wind on lake surface.)

The flow leaking through the flashing in the control structure immediately above the intake and below the point of measurement was estimated at 2 second-feet.

The power company forces are working at the present time on the channel leading from the lake outlet proper to the intake with a view to sealing off the underground seepage in this section. Irrigation diversions from the spring channels leading to the lake proper were not canvassed.

For your information reference is made to stream-flow records obtained on Clear Lakes outlet near Buhl, Idaho, June 6, 1917, to November 27, 1920. See Water-Supply Paper No. 533, pages 162-165. A miscellaneous measurement made on August 22, 1937, was reported to you in my letter of August 25, 1937.

Very truly yours,

Thomas R. Newell

Thomas R. Newell,
District Engineer.

10415

Form 23

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

REPORT OF ENGINEER

PERMIT NO. 10415

REPORT ON PROOF OF Beneficial Use

35

36

1

2

CLEAR LAKE

Point of Diversion

Point of Return

SNAKE RIVER

11

12

10115

SCALE: 2 INCHES EQUALS 1 MILE. DRAW MAP IN INK.

Form 23

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

REPORT OF ENGINEER

Permit No. 10415

This proof is for Beneficial Use In Water District No.

1. Name of applicant Idaho Power Company

2. Source of water supply: Clear Lake and its feeders

3. Location of point of diversion: Is in the Lot 7 of Section 2

T. 9 S., R. 14 E., B. M. County of Gooding

4. Describe works as they exist, giving dimensions and capacities of same: Diversion works include Dam of earth, rock and concrete. Head works and a steel penstock of 90" Diam. x about 1100 ft in length. Plant equipment includes 1 Hor. type Francis Turbine, and 1 Westinghouse 3125 K.V.A. generator

5. Water is used for: Power

6. State whether or not water has been turned into works of diversion: yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation): To be used for power at Foot of Devils Wash Board N. 81°00' E. 576 feet from the SE corner of the SW¼ of Section 2, T. 9 S., R. 14 E., B. M.

(Submit map on attached plat, showing location and details of above description.

8. What large stream would the water here appropriated finally reach? Snake River

Remarks: Plant operates under 78 ft. head and a test run taken during measurement of available water developed 2100 K.W. Power thus developed is delivered to the Main Trunk Line of the Company's distribution system for general use as required.

The rate of stream flow as measured by Mr. J.R. Newell and his assistant Mr. Benedict was 518 Second feet, which amount was said to operate the plant at 87% of Max capacity

This examination was made on the 9th day of Nov., 1937

10115 (Signed) Fred D. Holman
Examiner.

Idaho Power Company
Boise, Idaho

Permit No. 10415

Examination for Beneficial Use

County Gooding

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.

2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.

3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.

4. If any unusual conditions are discovered, make a plain statement of them under remarks.

5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.

November 8, 1937

Re: Permit 10415.

Mr. E. M. Robinson, Pres.
Idaho Power Company
Boise, Idaho

Dear Mr. Robinson:

This will acknowledge receipt of notice in duplicate for publication in connection with beneficial use proof, and also your authorization to have the notice published in the Gooding Leader, Gooding, Idaho, all in connection with Permit 10415.

A copy of the notice has been mailed to the newspaper with instructions to publish it once a week for five consecutive weeks prior to December 11, 1937. About ten days prior to this date depositions consisting of one for the holder and one each for two witnesses will be mailed to M. E. Hughes, Notary Public, Boise, Idaho, so that he will have them in ample time for the proof.

On the date designated you should appear at Mr. Hughes's office with two disinterested witnesses who are familiar with the terms of the permit and the works constructed thereunder, for the purpose of executing the depositions.

Very truly yours,

Deputy Commissioner of Reclamation

jl

10415

FORM NO. 11-A

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

Date November 8, 1937

Re: Permit 10415.

THE GOODING LEADER
Gooding, Idaho

DEAR SIR:

Enclosed you will find notice for publication once a week for five consecutive weeks prior to December 11, 1937, the date set for proof, the expense of the publication to be paid by the applicant, Idaho Power Co., Boise, Idaho,

to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice and furnish this office with a copy of the first publication.

Very truly yours,

R. W. FARIS

Commissioner of Reclamation

10415

Form No. 11

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) November 3, 1937

(P. O.) 1220 Idaho Street, Boise, Idaho.

TO THE COMMISSIONER OF RECLAMATION:

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the Gooding Leader of Gooding, Idaho, published in the county in which the works are situated, **said publication to be once each week for five (5) consecutive weeks prior to December 11, 1937.**

T. M. Robinson

President, Idaho Power Company.

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer)

I hereby certify that the facts set forth in the attached notice are true.

Engineer.

10415

Form 10

NOTICE FOR PUBLICATION

NOTICE OF PROOF APPLICATION OF WATER
TO BENEFICIAL USE

Notice is hereby given that at 10 A. M. on the 11th day of December, 19 37, at 1220 Idaho Street, Boise, County of Ada, State of Idaho, before M. E. Hughes, Notary Public, proof will be submitted of the application to beneficial use of 526 cubic feet per second of the waters of Clear Lake and its feeders in accordance with the terms and conditions of Permit No. 10415 heretofore issued by the State Engineer of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Idaho Power Company, Boise, Idaho.

The use to which said water has been applied is electrical power generation.

The amount applied to beneficial use is 526 cubic feet per second, or so much thereof as is available.

The place where said water is used (if for irrigation, give full and accurate description of the lands irrigated) Power plant and works located in Lot 7, Section 2, Township 9 South, Range 14 East, B. M., in Gooding County, Idaho.

The name of the canal or ditch or other works by which said water is conducted to such place of use is: Idaho Power Company dam, diverting works and steel pipe line.

The right to take water from such works is based upon Permit No. 10415.

The source of supply from which such water is diverted is Clear Lake and its feeders, a tributary of Snake River.

The date of priority which said user is prepared to establish is January 18, 1919. ~~February 20, 1919.~~

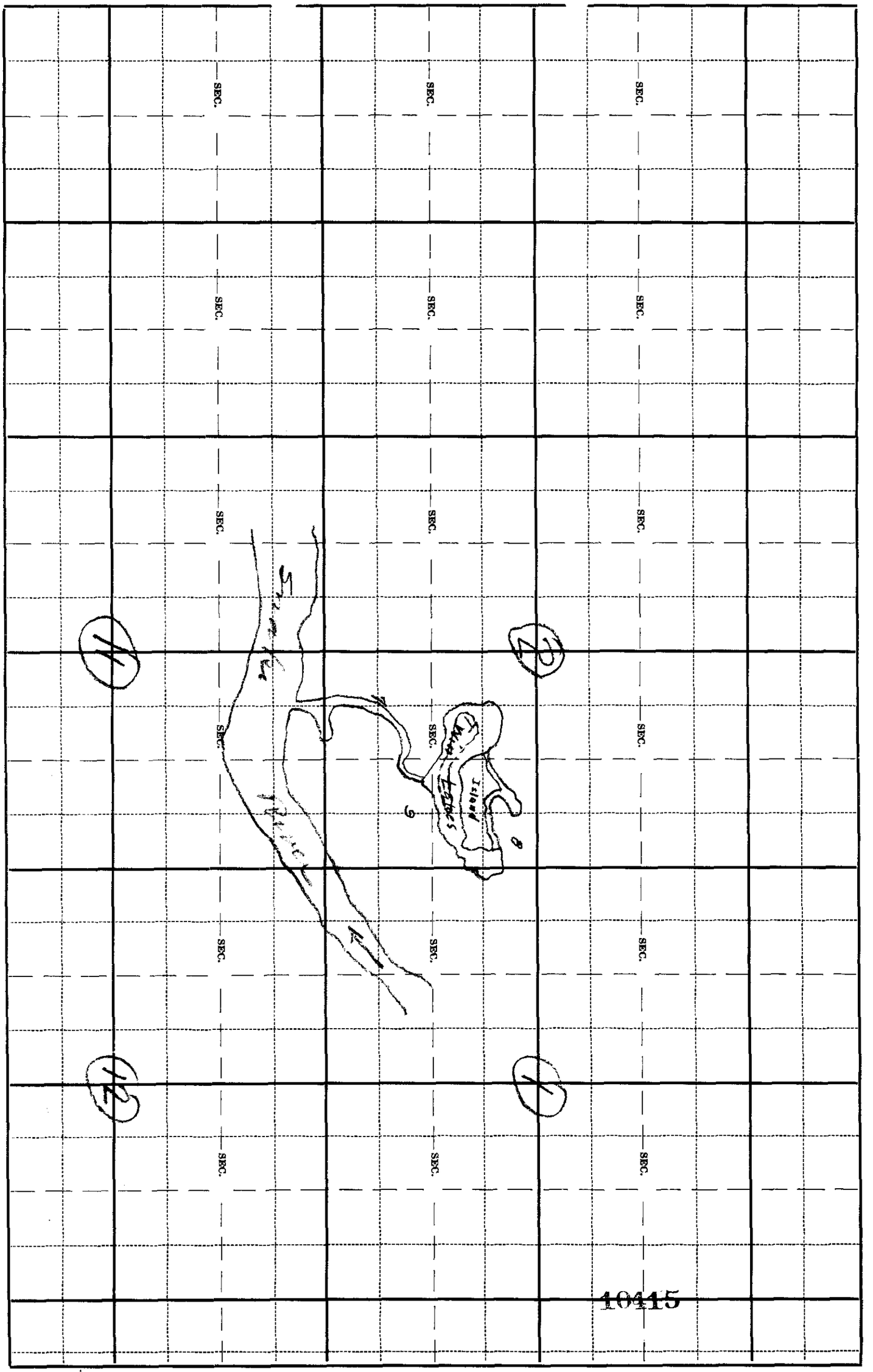
R. W. FARIS

Commissioner of Reclamation.

10115

NAME OF APPLICANT Phil Smith T 9S-R14E

FORM NO. 0



10415

SCALE: 2 INCHES EQUAL 1 MILE. DRAW PLAN IN INK

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

Memorandum

Re: CLEAR LAKES POWER DEVELOPMENT
(Under Permit No. 10415)

This project, which consists of

1. Forebay construction of a rock-fill dam about 225 feet in length with a maximum height above old stream bed of approximately 15 feet. This dam is faced with a 3" concrete slab, laid on a slope of about 2 - 1 and said to have a cutoff wall for a considerable distance along the toe;

2. Spillway is of a concrete structure, having seven discharge gate openings, six feet wide and controlled by flash planks. Spillway discharge is over O. G. sections, having a top elevation about five feet below high water level;

3. Headworks are of concrete, having walls of about 18" minimum thickness, steel trash racks and gates. Outlet gates are installed for 90" steel pipes. One pipe of the above diameter, of 1/4 inch thickness and length of 1128 feet, has been installed and tested. This pipe rests on timber supports or saddles built of 12" x 12" and 6" x 12" timber, laid on 3" x 12" sills;

4. The pipe is banded by 3" x 5" x 3/8" angle irons, spaced 11' - 4" C. C., with intermediate reinforcing angles of same material, of 120 degrees of circle or about 8 feet in length, riveted to the top of the pipe. The outlet end is equipped with a 54" "Joshua Hendy" Butterfly valve, discharging into open air at the foot of the waterfall, known locally as the "Devils Washboard;"

was viewed upon this date and conditions noted as follows, viz:

The original installation as reported under date of May 20, 1927, when examination for proof of completion for works was made, was found to be in substantially the same condition now as it was then after allowance for slight depreciation has been made. No marked deterioration of the penstock was noted at this time and the concrete headgate shows little depreciation from the effects of the weather, or otherwise. The rock-fill dam adjacent to the spillway section shows considerably more evidence of neglect, it being undermined for a distance of approximately 12 feet at one point, although the concrete facure still spans the section. Another point near the above shows signs of settlement on part of the rock fill.

No evidence of additional construction to or maintenance of the original installations was observed. All spillway openings were unobstructed and the penstock control gate was closed. Under these conditions the area of the lake was estimated to be about 12 acres.

For further details and photographic views see "Report on Completion of Works" dated May 20, 1927.

Paul H. Berg Fred S. Dolman

Dated this 16th day of March, 1937

10415

March 29, 1937

Re: Permit No. 10415

HAROLD Wm. MERRITT, Civil Engineer
Twin Falls, Idaho

Dear Mr. Merritt:

Pursuant to your request contained in your letter of March 26th, I have arranged with the Idaho Blueprint and Supply Company to furnish you with a photostatic copy of the blueprint which accompanied application for the above permit.

The blueprint was delivered to that company this morning, and no doubt the photostatic copy will reach you within the next couple of days.

Very truly yours

Deputy Commissioner of Reclamation

PLH/oj

10415

March 29, 1937

Re: Permit No. 10415

HAROLD WM. MERRITT, Civil Engineer
Twin Falls, Idaho

Dear Mr. Merritt:

Pursuant to your request contained in your letter of March 26th, I have arranged with the Idaho Blueprint and Supply Company to furnish you with a photostatic copy of the blueprint which accompanied application for the above permit.

The blueprint was delivered to that company this morning, and no doubt the photostatic copy will reach you within the next couple of days.

Very truly yours

Deputy Commissioner of Reclamation

PLH/cj

10415

HAROLD WM. MERRITT
CIVIL ENGINEER
TWIN FALLS, IDAHO

SURVEYS
INVESTIGATIONS
REPORTS

IRRIGATION
CONSTRUCTION
ESTIMATES

RECEIVED
MAR 29 1937
Department of Reclamation

MARCH, 26, 1937

Paul L. Henry,
Office Engineer,
Dept. of Reclamation,
Boise, Idaho.

Dear Mr. Henry:

Thanks for your information relative to the prints etc. of the I.P.Holdings. Think it would be advisable to have a photostat then of the map in question and Id appreciate your sending me one at your earliest convenience.

Thanks again for your courtesies in this matter.

Very truly yours,

Harold Wm Merritt

10415

March 23, 1937

Re: Permit No. 10415

HAROLD WM. MERRITT, Civil Engineer
Twin Falls, Idaho

Dear Mr. Merritt:

I have your letter of March 21st wherein you request a print of the map that accompanied application for the Idaho Power Company's permit covering the power site at Clear Lake.

Permit No. 10415, issued to William Hazzard and later assigned to the Bankers Trust Company of Salt Lake City, Utah, is no doubt the permit you have in mind, although there is nothing on the record to indicate that it now belongs to the Idaho Power Company. I am very sorry to advise you that the map which accompanied application for this right is a blueprint rather than a tracing and it will therefore be impossible to comply with your request. This is an old permit, and at the time when it was applied for, the requirements governing the filing of maps were not nearly so rigid as they have been for the past few years. It will be possible, however, to obtain a photostatic copy of this map if you feel that such a copy will be of any material advantage to you. I, personally, doubt that the photostat would be of any particular value.

I can arrange to prepare a tracing of this map for you if the City of Buhl cares to pay for it. In that case, however, the map would, of course, have to be used by you merely for your own information. I think that this tracing can be prepared for around $5.00. If you care to have it, I shall endeavor to make it up immediately, or if you wish the photostatic copy, kindly advise us and it will be furnished promptly.

With kindest regards, I am

Very truly yours

Deputy Commissioner of Reclamation

10415

PLH/ej

SURVEYS
INVESTIGATIONS
REPORTS

HAROLD WM. MERRITT
CIVIL ENGINEER
TWIN FALLS, IDAHO

IRRIGATION
CONSTRUCTION
ESTIMATES

MARCH, 21, 1937

RECEIVED
MAR 22 1937
Department of Reclamation

Paul L. Henry,
State Reclamation Office,
Boise, Idaho.

Dear Mr. Henry:

Wish you would send me as soon as is possible, a print of map accompanying application of Idaho Power Co. for permit on their Clear Lakes site.

Application by De Neal for Buhl arrived O.K. and thanks for your courtesies in the matter.

With kindest regards,

Harold Wm Merritt

HWM/M

10415

June 8, 1928

MR. H. C. WYMAN
Attorney at Law
Boise, Idaho

Dear Sir:

This letter is to remind you of the pendency of an application for extension of time for completion of works under House Bill No. 21, Laws of 1927, filed for the benefit of Permit No. 10415, Wm. C.Hazzard.

In order that the record in this office may be clear as to disposal made of this application, it seems appropriate for permit holder to file a waiver or request for withdrawal of the said application, or I presume the matter could be handled by an order of this department, denying the application.

I assume that permit holder does not expect to urge further the application for extension of time and it is immaterial to me as to which of the two foregoing suggestions be employed to clear the record.

Very truly yours,

Commissioner of Reclamation

GNC:E

10415

Bankers Trust Company

SALT LAKE CITY, UTAH

August 3, 1927.

LEGAL DEPARTMENT
C. GORDON DOUGLAS
ROBERT A. BURNS

Mr. George M. Carter,
Commissioner of Reclamation,
State Capitol Bldg.,
Boise, Idaho.

Dear Sir:

In reply to your favor of July 25 we are enclosing herewith check to your order for 50¢ to cover your fee for filing assignment of water permit No. 10415 from William C. Hazzard and wife to Bankers Trust Company.

Thanking you for your courtesy,

Yours very truly,

Enc.
CGD/MB

C G Douglas

10415

July 25, 1927.

Re: Permit No. 10415-Hazzard

Bankers Trust Company,
Salt Lake City, Utah. Attention: Mr. O. G. Douglas

Gentlemen:-

Your letter of the 22nd inst., enclosing assignment of the above numbered permit received today. The assignment has been recorded under the record of the permit in this office and is herewith returned for your files.

Please remit 50 cents recording fee.

Very truly yours,
GEO. N. CARTER,
Commissioner of Reclamation.

By_____
Chief Clerk.

Enc. D

10415

Bankers Trust Company

SALT LAKE CITY, UTAH

July 22, 1927.

LEGAL DEPARTMENT
C. GORDON DOUGLAS
ROBERT A. BURNS

Commissioner of Reclamation
of the State of Idaho,
Capitol Bldg.,
Boise, Idaho.

Dear Sir:

Enclosed herewith under registered cover please find an assignment of water rights executed by William C. Hazzard and wife in favor of Bankers Trust Company.

We would like to have this assignment recorded in your office and will appreciate your advising us as to your fee for this service for which we will immediately send you our check.

Kindly return the instrument to us when recorded.

Yours very truly,

Enc.
Reg.
CGD/MB

C G Douglas

10115

THIS INDENTURE, Made this 31st day of July, 1933, by and between First Security Trust Company, a corporation organized under the laws of the State of Utah, and qualified to own property and do business in the State of Idaho, said corporation having been formed on or about the 31st day of March, 1931, by the consolidation under the laws of the State of Utah of Bankers Trust Company, a Utah Corporation, and Central Trust Company, a Utah corporation, the party of the first part, and Idaho Power Company, a corporation of the State of Maine, and qualified to own property and do business in the State of Idaho, the party of the second part, WITNESSETH:

That the said party of the first part, for and in consideration of the Sum of One Hundred and no/100 ($100.00) Dollars lawful money of the United States of America, and other valuable consideration to it in hand paid by the said party of the second part, receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns, forever, all the following described real estate situate in the County of Gooding, State of Idaho, to-wit:

All that part of Lot seven (7), west of Clear Lake and Clear Creek in Section two (2), Township nine (9), South, Range fourteen (14) East of the Boise Meridian, reserving, however, to Otis E. Syster and Mary E. Syster, his wife, for themselves and their assigns, a personal right over a strip of lake shore line extending back fifteen (15) feet from the water's edge of Clear Lake for the landing of boats and fishing privileges for themselves and guests; also reserving to said Otis E. Syster and Mary E. Syster a personal right of way, twenty (20) feet wide across a portion of said Lot seven (7) as

Rec'd June 28, '37

10415

a roadway, as the same is described in a reservation in a certain deed from Otis E. Syster and Mary E. Syster, his wife, to William C. Hazzard and Charles D. Marsh, which deed is dated September 20th, 1909, and is recorded in the office of the Recorder of Lincoln County, Idaho, in Book 13 of Deeds at page 251. The covenants and reservations in favor of the grantors in said deed to be accepted and performed by the said party of the second part herein.

Also all that part of Lot two (2), Section eleven (11), Township nine (9) South, Range fourteen (14) east of the Boise Meridian, which lies east of a straight line projected south to Snake River from the Southwest corner of Lot seven (7) in Section two (2), Township nine (9) South, Range fourteen (14) East of the Boise Meridian, which is the quarter corner on the south line of said Section two (2).

Also all that part of Lot six (6) in Section eleven (11), Township nine (9) South, Range fourteen (14) East of the Boise Meridian, which lies west of the thread of Clear Creek and east of a straight line projected south to Snake River from the south west corner of Lot seven (7) in Section two (2), said Township and Range, which is the quarter corner on the south line of said Section two (2).

Also all that part of Lot nine (9), Section two (2), Township nine (9) South, Range fourteen (14) East of the Boise Meridian, which lies West of the present east bank of Clear Creek, as conveyed in a certain deed by Otis E. Syster and Mary E. Syster, his wife, to William C. Hazzard, dated September 19, 1922 and recorded in Book 17 of deeds, page 580, in Recorder's office of Gooding County, Idaho. The covenants and reservations in favor of the grantors in said deed to be accepted and per-

formed by the said party of the second part herein.

Also all that part of Section two (2), Township nine (9) South, Range fourteen (14) East of the Boise, Meridian, being a strip of the bed and shore land lying along the bed and east bank of Clear Creek, and extending back thirty (30) feet from the water's edge of said creek, and extending in a northerly direction from the old roadway across the Natural Bridge to Clear Lake as described in a quitclaim deed and outlined in red on the survey map which is attached to said deed, both of which instruments, deed and map, are signed by Otis E. Syster and Mary E. Syster, his wife, and duly recorded in Book 23 of Deeds at Page 327, in the records of Lincoln County, Idaho, the covenants and reservations in favor of the grantors in said deed to be accepted and performed by the said party of the second part herein.

Also all power rights, headworks, diversion works, canal, forebay, all rights of way appurtenant to or located on said premises and all water filings and franchises, including all water rights in Permit No. 10415, which is of record in the office of the Department of Reclamation of the State of Idaho, except as to reservations hereinafter specified for domestic and irrigation water for William C. Hazzard and Louise Hazzard, his wife.

Also a right of way for roadway upon and over a strip of land described as follows: Commencing at the northwest corner of Lot seven (7), in Section two (2), Township nine (9) South, Range fourteen (14) East of the Boise Meridian; running thence north along the east line of the northeast quarter ($NE\frac{1}{4}$) of the southwest quarter ($SW\frac{1}{4}$) of said Section two (2), to the County Road, a distance of about twelve hundred (1200) feet; thence west along the said County Road a distance of thirty (30) feet; thence south, parallel with the east line of said northeast

quarter ($NE\frac{1}{4}$) of the southwest quarter ($SW\frac{1}{4}$) and thirty (30) feet distant therefrom to a point opposite a point on the west line of said Lot seven (7) which is thirty (30) feet south of the northwest corner of said Lot seven (7); thence east to the west line of said Lot seven (7); thence north to the northwest corner of said Lot seven (7) and the place of beginning, reserving, however, to William C. Hazzard and Louise Hazzard, his wife, a right of way along and over said strip of land upon which to construct and maintain a pipe line or conduit to convey water for irrigation and domestic purposes to the lands of said William C. Hazzard and Louise Hazzard, his wife, to the south and west of said strip of land, and also reserving to said William C. Hazzard and Louise Hazzard, his wife, the right to change in such manner as they see fit the channel of the stream which flows from Hopkins Springs and Lava Springs across said strip of land, which springs furnish the water for irrigation and domestic purposes for the lands of said William C. Hazzard and Louise Hazzard, his wife, lying to the south and west of said strip of land, and also reserving the right to cross said strip of land with such irrigation ditches and other conduits of the said William C. Hazzard and Louise Hazzard, his wife, their heirs and assigns, as may be necessary or convenient to convey said water across said strip, and further reserving to said William C. Hazzard and Louise Hazzard, his wife, their heirs and assigns, the right to use said strip of land for a road to the lands of said William C. Hazzard and Louise Hazzard, his wife, all of which will be at the expense of the said William C. Hazzard and Louise Hazzard, his wife, for such conduits, and which shall not interfere with nor impair the use of said roadway by the party of the second part.

PROVIDED, however, that the said party of the second part shall never construct or maintain any retaining wall or

dam or other barrier upon said strip of land which will interfere with the flow of said stream of water from said Hopkins and Lava Springs as the channel of said stream or streams are now located or as they may be hereafter changed by the said William C. Hazzard and Louise Hazzard, his wife, their heirs or assigns.

Also all power or manufacturing rights in the water filings made by Henry T. Smith, to all water flowing from Lava Springs, and filed August 23, 1893, by instrument recorded in Book 1, page 145 of Water Rights, records of Lincoln County, Idaho, except the water rights, not to exceed one cubic foot per second, for domestic and irrigation and agricultural purposes named herein which said water for said irrigation, agricultural and domestic purposes is hereby reserved to the said William C. Hazzard and Louise Hazzard, his wife.

All water which flows from Hopkins Springs is hereby reserved to the said William C. Hazzard and Louise Hazzard, his wife, for domestic, irrigation and other purposes.

Also is hereby reserved to the said William C. Hazzard and Louse Hazzard, his wife, their heirs and assigns, three (3) cubic feet of water per second for irrigation and domestic purposes, or either thereof, out of said Permit 10415. Said water for irrigation and domestic uses so reserved to be taken out of the forebay through a water gate, or gates, located in the north forebay wall and to be conducted across said Lot seven (7), and there is also reserved to said William C. Hazzard and Louise Hazzard, his wife, their heirs and assigns, rights of way or easements not to exceed ten feet in width over said Lot seven (7), which are to be located and selected by said William C. Hazzard and Louise Hazzard, their heirs and assigns, for the purpose of conducting said water across Lot seven (7), provided said rights of way

or easements are so located as not to interfere with the construction and development of the headworks, diversion works or power plant, or plants, of the said party of the second part.

Also is included with the real estate above described certain personal property described as donkey engine, a large derrick and fixtures, including cables, all steel beams and trash racks, now located upon the above described premises.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues, and profits thereof and all estate, right, title, and interest in and to said property, as well in law as in equity, of the said party of the first part.

The reservations herein described in favor of William C. Hazzard and Louise Hazzard, his wife, are the same reservations described and set forth in that certain deed, dated June 4th, 1927, by and between William C. Hazzard and Louise Hazzard, his wife, parties of the first part, and Bankers Trust Company, a corporation, party of the second part, which deed is recorded in Book 8 of Deeds, at page 592, in the office of the County Recorder of Gooding County, State of Idaho, and the covenants and reservations in said deed of June 4th, 1927, in favor of said William C. Hazzard and Louise Hazzard, his wife, are to be accepted and performed by party of second part herein, provided that said covenants and reservations are not in any way to be construed or enlarged by anything herein said or expressed.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, the reversion and reversions, unto the party of the second part, and to its successors and assigns forever, subject to a lease,

dated August 12th, 1927, between Bankers Trust Company, a corporation of Utah, party of the First part, and Otis E. Syster and Mary E. Syster, parties of the second part, which lease was recorded September 17, 1928, in Book 3 of Agreements, at Page 13, in the office of the County Recorder of Gooding County, State of Idaho. And the said party of the first part herein, for itself, its successors and assigns, doth covenant with the said party of the second part herein, its successors and assigns, that neither it, the said party of the first part herein, nor Bankers Trust Company, a Utah corporation and one of the predecessors in interest of said party of the first part herein, have made, done, or executed any act or thing, other than the above described lease, whereby the above described property, or any part thereof, is or has been imperiled, charged or encumbered in any manner whatsoever; and the title to the above grant and premises against all persons or governments claiming the same from, through or under the said party of the first part herein, or the said Bankers Trust Company, the said party of the first part herein will forever warrant and defend.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal the day and year first above written.

(CORPORATE SEAL)

FIRST SECURITY TRUST COMPANY,

By (Sgd.) Fred. E. Smith.
President

ATTEST:

(Sgd.) W. E. Myrick
Asst. Secretary

STATE OF UTAH)
: SS
COUNTY OF SALT LAKE)

On this 31st day of July, 1933, before me, Clarence E. Raybould, a Notary Public in and for said State of Utah, personally appeared Fred E. Smith, known to me to be the president of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

(Sgd.) Clarence E. Raybould
Notary Public,
Residing at Salt Lake City, Utah

My Commission expires
Feby 27 1934

U. S. Documentary
Revenue Stamps attached
in the amount of $198.00
(Cancelled)

ENDORSEMENT

65358

State of Idaho)
County of Gooding) ss

I hereby certify that this instrument was filed for record at the request of E. C. Kiersted at 4:35 o'clock P. M., this 14 day of August, 1936 in my office, and duly recorded in book 28 - Deeds, at page 186.

(Sgd.) Bert Bowler
Ex-officio Recorder

By (Sgd.) Vera T. Wright
Deputy

Fees $4.20

10415

Second-

10415

STATE OF IDAHO,)
COUNTY OF ADA.) ss.
CITY OF BOISE.)

I, A. C. INMAN, Secretary of Idaho Power Company, do hereby certify that the attached and foregoing is a full, true and correct copy of the original deed, including official record of the recording thereof, as the same appears and is a part of the records and files of Idaho Power Company.

A. C. Inman.

Received and filed for record in part in the Department of Reclamation at Boise, Idaho, at 11:30 A. M., June 28, 1937
R. W. Fari
Commissioner of Reclamation
By J. S.

THIS INDENTURE, Made this 31st day of July, 1933, between George H. Dern, Wilson McCarthy, Louis S. Cates, A. C. Ellis, Jr., Duncan MacVichie, George S. Eccles, J. H. Rayburn, James S. Taylor, H. J. Stoddard and J. F. Dunn, as Statutory Trustees of Bankers Trust Company, a corporation created under the laws of the State of Utah, acting for and on behalf of said corporation and its stockholders or members of said corporation and in accordance with the authority invested in them so to act, the parties of the first part, and First Security Trust Company, a corporation of the State of Utah and qualified to do business in the State of Idaho, the party of the second part;

WHEREAS, said Bankers Trust Company was on the 4th day of June, 1927, and at all times thereafter, in good standing under the laws of the State of Idaho until the 30th day of November, 1931, at which latter date its right to do business in the State of Idaho was forfeited under the laws thereof for failure to pay the license fees for said corporation as required by Section 4782, Compiled Statutes of Idaho, now Section 29-603 Idaho Code Annotated; and

WHEREAS, said Bankers Trust Company was at the time of said forfeiture the legal owner of all that certain property hereinafter described; and

WHEREAS, on or about the 30th day of March, 1931, acting under the laws of the State of Utah, said Bankers Trust Company and Central Trust Company, a corporation of the State of Utah, consolidated to form First Security Trust Company, party of second part herein, a corporation now in existence under the laws of the State of Utah and qualified to do business in the State of Idaho; and

WHEREAS, said First Security Trust Company, under the terms of the agreement of said consolidation, is rightfully entitled to all the property described herein free and clear of any

claim, legal, pretended, or otherwise, of said Bankers Trust Company, its directors and its stockholders or its members; and

WHEREAS, the articles of incorporation of said Bankers Trust Company at the time of the forfeiture of its right to do business within the State of Idaho, provided for twelve (12) Directors of said Company; and

WHEREAS, at the time of the said forfeiture, the following were the duly elected, acting and qualified directors of said Bankers Trust Company:

W. W. Armstrong	George S. Eccles
George H. Dern	J. H. Rayburn
Wilson McCarthy	James S. Taylor
Louis S. Cates	H. J. Stoddard
A. C. Ellis, Jr.	J. F. Dunn
Duncan MacVichie	

and

WHEREAS, there was then one (1) vacancy in said board; and

WHEREAS, there has been no change in the membership of said board subsequent to the date of said forfeiture, except that W. W. Armstrong has since died, and that the vacancy thus caused has not been filled; and

WHEREAS, the powers of the undersigned as directors of said Bankers Trust Company at the time of said forfeiture and as Statutory Trustees of said Bankers Trust Company have not at any time been annulled or modified subsequent to the date of said forfeiture; and

WHEREAS, the undersigned, the directors of said Bankers Trust Company at the time of its said forfeiture, became the statutory trustees of said Company on the forfeiture of its right to do business as a corporation in the State of Idaho and are such Statutory Trustees at this time; and

WHEREAS, the undersigned, as said Statutory Trustees, have been requested to execute this deed to said First Security Trust Company;

NOW, THEREFORE, the parties of the first part, for and in consideration of the sum of One Hundred Dollars lawful money

of the United States of America, and other valuable considerations to them in hand paid by the party of the second part, receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the party of the second part and to its successors and assigns, forever, all the following described real estate situated in the County of Gooding, State of Idaho, to-wit:

All that part of Lot seven (7), west of Clear Lake and Clear Creek in Section two (2), Township nine (9), South, Range fourteen (14) East of the Boise Meridian, reserving, however, to Otis E. Syster and Mary E. Syster, his wife, for themselves and their assigns, a personal right over a strip of lake shore line extending back fifteen (15) feet from the water's edge of Clear Lake for the landing of boats and fishing privileges for themselves and guests; also reserving to said Otis E. Syster and Mary E. Syster a personal right of way, twenty (20) feet wide across a portion of said Lot seven (7) as a roadway, as the same is described in a reservation in a certain deed from Otis E. Syster and Mary E. Syster, his wife, to William C. Hazzard and Charles D. Marsh, which deed is dated September 20th, 1909, and is recorded in the office of the Recorder of Lincoln County, Idaho, in Book 13 of Deeds at Page 251. The covenants and reservations in favor of the grantors in said deed to be accepted and performed by the said party of the second part herein.

Also all that part of Lot two (2), Section eleven (11), Township nine (9) South, Range fourteen (14) east of the Boise Meridian, which lies east of a straight line projected south to Snake River from the southwest corner of Lot seven (7), in Section two (2), Township nine (9) South, Range fourteen (14) East of the Boise Meridian, which is the quarter corner on the south line of said Section two (2).

Also all that part of Lot six (6) in Section eleven (11), Township nine (9) South, Range fourteen (14) East of the Boise Meridian, which lies west of the thread of Clear Creek and east of a straight line projected south to Snake River from the south

west corner of Lot seven (7) in Section two (2), said Township and Range, which is the quarter corner on the south line of said Section two (2).

Also all that part of Lot nine (9), Section two (2), Township nine (9) South, Range fourteen (14) East of the Boise Meridian, which lies west of the present east bank of Clear Creek, as conveyed in a certain deed by Otis E. Syster and Mary E. Syster, his wife, to William C. Hazzard, dated September 19, 1922, and recorded in Book 17 of deeds, page 580, in Recorder's office of Gooding County, Idaho. The covenants and reservations in favor of the grantors in said deed to be accepted and performed by the said party of the second part herein.

Also all that part of Section two (2), Township nine (9) South, Range fourteen (14) East of the Boise Meridian, being a strip of the bed and shore land lying along the bed and east bank of Clear Creek, and extending back thirty (30) feet from the water's edge of said creek, and extending in a northerly direction from the old roadway across the Natural Bridge to Clear Lake as described in a quitclaim deed and outlined in red on the survey map which is attached to said deed, both of which instruments, deed and map, are signed by Otis E. Syster and Mary E. Syster, his wife, and duly recorded in Book 23 of Deeds at Page 327, in the records of Lincoln County, Idaho, the covenants and reservations in favor of the grantors in said deed to be accepted and performed by the said party of the second part herein.

Also all power rights, headworks, diversion works, canal, forebay, all rights of way appurtenant to or located on said premises and all water filings and franchises, including all water rights in Permit No. 10415, which is of record in the office of the Department of Reclamation of the State of Idaho, except as to reservations hereinafter specified for domestic and irrigation water for William C. Hazzard and Louise Hazzard, his wife.

Also a right of way for roadway upon and over a strip of land described as follows: Commencing at the northwest corner of Lot seven (7), in Section two (2), Township nine (9) South,

Range fourteen (14) East of the Boise Meridian; running thence north along the east line of the northeast quarter ($NE\frac{1}{4}$) of the southwest quarter ($SW\frac{1}{4}$) of said Section two (2), to the County Road, a distance of about twelve hundred (1200) feet; thence west along the said County Road a distance of thirty (30) feet; thence south, parallel with the east line of said northeast quarter ($NE\frac{1}{4}$) of the southwest quarter ($SW\frac{1}{4}$) and thirty (30) feet distant therefrom to a point opposite a point on the west line of said Lot seven (7) which is thirty (30) feet south of the northwest corner of said Lot seven (7); thence east to the west line of said Lot seven (7); thence north to the northwest corner of said Lot seven (7) and the place of beginning, reserving, however, to William C. Hazzard and Louise Hazzard, his wife, a right of way along and over said strip of land upon which to construct and maintain a pipe line or conduit to convey water for irrigation and domestic purposes to the lands of said William C. Hazzard and Louise Hazzard, his wife, to the south and west of said strip of land, and also reserving to said William C. Hazzard and Louise Hazzard, his wife, the right to change in such manner as they see fit the channel of the stream which flows from Hopkins Springs and Lava Springs across said strip of land, which springs furnish the water for irrigation and domestic purposes for the lands of said William C. Hazzard and Louise Hazzard, his wife, lying to the south and west of said strip of land, and also reserving the right to cross said strip of land with such irrigation ditches and other conduits of the said William C. Hazzard and Louise Hazzard, his wife, their heirs and assigns, as may be necessary or convenient to convey said water across said strip, and further reserving to said William C. Hazzard and Louise Hazzard, his wife, their heirs and assigns, the right to use said strip of land for a road to the lands of said William C. Hazzard and Louise Hazzard, his wife, all of which will be at the expense of the said William C. Hazzard and Louise Hazzard, his wife, for such conduits, and

which shall not interfere with nor impair the use of said roadway by the said party of the second part.

PROVIDED, however, that the said party of the second part shall never construct or maintain any retaining wall or dam or other barrier upon said strip of land which will interfere with the flow of said stream of water from said Hopkins and Lava Springs as the channel of said stream or streams are now located or as they may be hereafter changed by the said William C. Hazzard and Louise Hazzard, his wife, their heirs or assigns.

Also all power or manufacturing rights in the water filings made by Henry T. Smith, to all water flowing from Lava Springs, and filed August 23, 1893, by instrument recorded in Book 1, page 143 of Water Rights, records of Lincoln County, Idaho, except the water rights, not to exceed one cubic foot per second, for domestic and irrigation and agricultural purposes named herein which said water for said irrigation, agricultural and domestic purposes is hereby reserved to the said William C. Hazzard and Louise Hazzard, his wife.

All water which flows from Hopkins Springs is hereby reserved to the said William C. Hazzard and Louise Hazzard, his wife, for domestic, irrigation and other purposes.

Also is hereby reserved to the said William C. Hazzard and Louise Hazzard, his wife, their heirs and assigns, three (3) cubic feet of water per second for irrigation and domestic purposes, or either thereof, out of said Permit 10415. Said water for irrigation and domestic uses so reserved to be taken out of the forebay through a water gate, or gates, located in the north forebay wall and to be conducted across said Lot seven (7), and there is also reserved to said William C. Hazzard and Louise Hazzard, his wife, their heirs and assigns, rights of way or easements not to exceed ten feet in width over said Lot seven (7), which are to be located and selected by said William C. Hazzard and Louise Hazzard, their heirs and assigns, for the purpose of conducting said water across Lot seven (7), provided said

rights of way or easements are so located as not to interfere with the construction and development of the headworks, diversion works or power plant, or plants, of the said party of the second part.

Also is included with the real estate above described certain personal property described as donkey engine, a large derrick and fixtures, including cables, all steel beams and trash racks, now located upon the above described premises.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues, and profits thereof and all estate, right, title, and interest in and to said property, as well in law as in equity, of the said parties of the first part.

The reservations herein described in favor of William C. Hazzard and Louise Hazzard, his wife, are the same reservations described and set forth in that certain deed, dated June 4th, 1927, by and between William C. Hazzard and Louise Hazzard, his wife, parties of the first part, and Bankers Trust Company, a corporation, party of the second part, which deed is recorded in Book 8 of Deeds, at Page 592, in the office of the County Recorder of Gooding County, State of Idaho, and the covenants and reservations in said deed of June 4th, 1927, in favor of said William C. Hazzard and Louise Hazzard, his wife, are to be accepted and performed by party of second part herein, provided that said covenants and reservations are not in any way to be construed or enlarged by anything herein said or expressed.

This conveyance is made subject to a lease, dated August 12, 1927, between Bankers Trust Company, a corporation of Utah, party of the first part, and Otis E. Syster and Mary E. Syster, parties of the second part, which lease was recorded September 17, 1928, in Book 3 of Agreements at Page 13, in the Office of the County Recorder of Gooding County, State of Idaho.

TO HAVE AND TO HOLD, All and singular the said premises,

together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WITNESS:

/s/F. C. Lawler	/s/ Louis S. Cates
O. B. Soehner	H. J. Stoddard
P. W. Dayer	A. C. Ellis, Jr.
P. W. Dayer	Geo. H. Dern
P. W. Dayer	James S. Taylor
P. W. Dayer	George S. Eccles
P. W. Dayer	Duncan MacVichie
Fred E. Smith	J. H. Rayburn
P. W. Dayer	Wilson McCarthy
P. W. Dayer	J. F. Dunn

As Directors and as Statutory Trustees of Bankers Trust Company.

(Acknowledgments not copied)

10415

STATE OF UTAH)
: SS
COUNTY OF SALT LAKE)

On this 5th day of August, in the year 1933, before me, CLARENCE E. RAYBOULD, a Notary Public of the State of Utah, personally appeared A. C. ELLIS, JR., GEORGE H. DERN, JAMES S. TAYLOR, DUNCAN MacVICHIE, J. H. RAYBURN, WILSON McCARTHY and J. F. DUNN, proved to me on the oath of P. W. DAYER, to be seven of the eleven directors in office of the Bankers Trust Company on the 30th day of November, 1931, and seven of the ten present Statutory Trustees of said Company, a corporation of the State of Utah, formerly doing business within the State of Idaho, and known to me to be seven of the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same as such trustees and for and on behalf of said Bankers Trust Company and its stockholders, or members of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year herein first above written.

/sgd/ Clarence E. Raybould
Notary Public.

Residing at Salt Lake City, Utah

(SEAL) My Commission expires February 27th, 1934.

STATE OF UTAH)
: ss.
COUNTY OF WEBER)

On this 10th day of July, in the year 1933, before me, Roy D. Thatcher, a Notary Public of the State of Utah, personally appeared George S. Eccles, proved to me on the oath of P. W. Dayer to be one of the eleven directors in office of the Bankers Trust Company on the 30th day of November, 1931, and one of the ten present Statutory Trustees of said Company, a corporation of the State of Utah, formerly doing business within the State of Idaho, and known to me to be one of the persons whose names are subscribed to the within instrument, and acknowledged to me that he executed the same as such trustee and for and on behalf of said Bankers Trust Company and its stockholders, or members of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year herein first above written.

/sgd/ Roy D. Thatcher
Notary Public
Residing at:
My Commission Expires: April 9, 1936

(NOTARIAL SEAL)

10415

STATE OF CALIFORNIA)
: ss.
CITY AND COUNTY OF SAN FRANCISCO)

On this 7th day of September, in the year 1933, before me, Catherine E. Keith, a Notary Public of the State of California, personally appeared Louis S. Cates, proved to me on the oath of P. W. Dayer to be one of the eleven directors in office of the Bankers Trust Company on the 30th day of November, 1931, and one of the ten present Statutory Trustees of said Company, a corporation of the State of Utah, formerly doing business within the State of Idaho, and known to me to be one of the persons whose names are subscribed to the within instrument, and acknowledged to me that he executed the same as such trustee and for and on behalf of said Bankers Trust Company and its stockholders, or members of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year herein first above written.

/sgd/ Catherine E. Keith
Notary Public
Residing at: San Francisco, California
My Commission expires: Oct. 20, 1934

(NOTARIAL SEAL)

STATE OF MICHIGAN)
: ss
COUNTY OF WAYNE)

On this 28th day of August in the year 1933, before me, LouEtta A. Proper, a Notary Public of the State of Michigan, personally appeared H. J. Stoddard, proved to me on the oath of P. W. DAYER to be one of the eleven directors in office of the Bankers Trust Company on the 30th day of November, 1931, and one of the ten present Statutory Trustees of said Company, a corporation of the State of Utah, formerly doing business within the State of Idaho, and known to me to be one of the persons whose names are subscribed to the within instrument, and acknowledged to me that he executed the same as such trustee and for and on behalf of said Bankers Trust Company and its stockholders, or members of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year herein first above written.

/sgd/ LouEtta A. Proper
Notary Public
Residing at Detroit, Michigan
My Commission expires March
1, 1937.

(NOTARIAL SEAL)

10115

STATE OF IDAHO)
) ss No._____
County of Gooding)

I hereby certify that this instrument was filed for record at the request of E. C. KIERSTED at 4:30 o'clock P. M., this 14th day of August, 1936, in my office and duly recorded in book 28 - Deeds, at page 181.

BERT BOWLER (Sgd.)
Ex-officio Recorder

By VERA T. WRIGHT (Sgd.)
Duputy

Fees $5.60

Return to _____

10415

10415

First

10415

STATE OF IDAHO,)
COUNTY OF ADA.) ss.
CITY OF BOISE.)

I, A. C. INMAN, Secretary of Idaho Power Company, do hereby certify that the attached and foregoing is a full, true and correct copy of the original deed, including official record of the recording thereof, as the same appears and is a part of the records and files of Idaho Power Company.

Received and filed for record in part in the Department of Reclamation at Boise, Idaho, at 11:30 A. M., June 28 1927.

R. W. Faris
Commissioner of Reclamation

A. C. Inman.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

IN THE MATTER OF APPLICATION)
FOR EXTENSION OF TIME FOR)
COMPLETION OF WORKS UNDER) ORDER DENYING EXTENSION.
H. B. 21, SESSION LAWS OF)
IDAHO, 1927--PERMIT No. 10415.)

WHEREAS, William C. Hazzard, the record holder of Permit No. 10415, made due and regular application for an extension of time within which to complete the works contemplated under said permit, such application for extension being applied for under House Bill 21, Session Laws of Idaho, 1927, and

WHEREAS, a hearing upon said application was set down for May 19, 1927 at ten o'clock a. m., in the office of the Department of Reclamation at Boise, Idaho, and due publication of notice of said hearing was had all as required by law, and

WHEREAS, upon petition of counsel for Mary E. Syster, a protestant against the granting of such extension of time, said hearing was continued until June 1, 1927, and

WHEREAS, On June 1, 1927 a Certificate of Completion of Works was issued under the said permit No. 10415, and no further appearance or showing was made in furtherance of the application for extension of time for completion of works under the said permit.

NOW, THEREFORE, It is hereby ordered that the said application for extension of time as aforesaid mentioned, be, and the same hereby is, denied.

WITNESS, The hand and seal of the Commissioner of Reclamation this 27th day of June 1927.

Geo. N. Carter
Commissioner of Reclamation.

10115

June 8, 1927

Re: Permit No. 10415

MR. JESS B. HAWLEY
Attorney at Law
Boise, Idaho

Dear Sir:

I still have in mind the pending application for extension of time in which to complete works under Permit No. 10415, Wm. C. Hazzard.

I intended to bring the matter up at the hearing, but it slipped my mind.

The following day I called Mr. Wyman's attention to pendency of this application and suggested that he ask to have same withdrawn, which he agreed to do; however, he has not yet filed any request in the case.

Very truly yours,

Commissioner of Reclamation

GNC:E

10415

HAWLEY & HAWLEY
ATTORNEYS AND COUNSELORS

JAMES H. HAWLEY
JESS B. HAWLEY
O. W. WORTHWINE
SAM S. GRIFFIN
JAMES H. HAWLEY, JR.

OVERLAND BUILDING

BOISE, IDAHO

June 6, 1927

Commissioner of Reclamation,
Boise, Idaho.

Dear Mr. Carter:

I believe that every one has lost sight of the application for extension of time made by William C. Hazzard under Permit No. 10415. Possibly the issuance of proof of completion settles the application, but I assume that some formal order denying the extension should be made. I would like to be heard on this if there is to be any question in your mind about the proper thing to do.

Very truly yours,

Jess Hawley

JBH:LL

10415

June 1, 1927.

Re: Permit No. 10415.

Mr. William C. Hazzard,
Buhl, Idaho.

Dear Sir:-

Enclosed you will find the certificate of completion of works issued under your above numbered permit, with receipt for fees paid.

Very truly yours,
GEO. N. CARTER,
Commissioner of Reclamation.

By _____
Chief Clerk.

2enc.

10415

Copy

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

IN THE MATTER OF PROOF OF COMPLETION)
OF WORKS ON PERMIT NO. 10415, AND)
PROTEST FILED AGAINST ALLOWANCE OF A) HEARING
CERTIFICATE OF COMPLETION OF WORKS)

Pursuant to notice regularly given by mail, hearing was convened in the office of the Department of Reclamation on the date designated in said notice, and the following appearances were made:

On behalf of Permit Holder: Wm. C. Hazzard, and his attorney, H. C. Wyman.

On behalf of Protestant, Mary E. Syster: Her attorney, Jess B. Hawley.

The Permit Holder indicating that he was willing to stand upon the depositions and proof offered in the case, an adfidavit of Charles B. Smith, Civil Engineer, was offered by Mr. Hawley, and admitted, marked "Exhibit A Protestant"; whereupon the following statement was made by Mr. Hawley:

We desire to offer the affidavit of Charles B. Smith as part of the file in the case. There is no further proof to be made by us; we have considered that the Commissioner has before him the reports of his hydrographers, and with the affidavit of Mr. Smith, we feel the proof is sufficient to reduce the proven diversion as that was measured on May 21.

As to the general objections that we have, I might make those in the record at this time, though I rather believe they are legal problems, legal questions, which might more properly be raised in some other form. It is largely because of

1 June '27

the fact that the objections are to the form of the proof, to the assumptions indulged in by the Permit Holder, that we do not present any further proof than the affidavit of Mr. Smith. In order that the record might be clear, however, we desire to raise these points:

(1) The permit holder's proof, as well as the reports of hydrographers and others, especially detailed by the Commissioner of Reclamation to report to him, show that the works of diversion have not been completed in that no wheel has been erected and all of the purported works of diversion fail to accomplish diversion of the water to the place of beneficial user;

(2) The permit holder has unlawfully and without right, permission or authority, so constructed the diversion works so far completed as to cause the water of Clear Lake Creek and Clear Lakes to raise upon the lands of the protestant, Mary E. Syster, flood them, and thereby trespass upon her rights; that no legal authority exists in the permit holder to accomplish this result, and therefore, such portion of the diversion as is accomplished by the raising of the creek and lake level above the natural flow line of the stream and flood the lands of the protestant, constitute trespass and a violation of the statutory and constitutional rights of the protestant, Mary E. Syster;

(3) The amount of diversion which would be accomplished by the existing works without trespass upon the lands of the protestant is not in excess of 301 second feet and is in fact less than that amount.

The protestant further questions that the purported permit holder, William Hazzard, is in truth or in fact the actual permit holder, and further questions the right of Mr. Hazzard to make proof of completion of works under said permit.

This, I believe, is a statement of position of Mrs. Syster, and I assume that there is no further statement required, and I have no further proof to offer than the affidavit.

Mr. Wyman:

The legality of some of the questions raised by Mr. Hawley can only be determined in the District Court.

The records of this office show Mr. Hazzard to be the owner of the permit and that he is the record owner of the diversion works, and no proof has been offered by the protestant to the contrary.

The only question apparently is the amount of water the department should grant in the certificate. I think that the Commissioner has no doubt of the results of the hydrographers of his office, in addition to that of the affidavit of Mr. Paulsen, the Government hydrographers and his observers, as to the amount of water which the pipeline and the headgates and the dam is capable of diverting. Indeed, it is doubtful in the first place whether or not Mr. Smith was there at the time Mr. Paulsen and Mr. Tolman took the second measurement. I think they can show very conclusively that Mr. Smith was not there in person. He saw the first measurement which was very near 301 second feet.

Now this department is governed by Section 5570 and those relating to proof of completion of works and not the quantity of water that there may be in Clear Lakes that can be applied to beneficial use. How much water can finally be secured can only be proven at the time we apply for beneficial use. It might well be found that there is a hole in the bottom of Clear Lakes that is letting water either around the sides or through to Snake River. We have until we make our final ppof of beneficial use to secure as much water as we can under the limit of the diversionworks at this time and the limit of our original application.

The report of Mr. Tolman, the engineer of this department, shows that the works are capable of developing 1,000 cubic feet. We have evidence to show that some 750 cubic feet can be diverted by the present diversion work.

The legal questions that Mr. Hawley raised and that of trespass are not before this court, so that we rest upon the report of this office.

Mr. Hawley:

May I ask you a question, Mr. Wyman? Is it your contention that the works of diversion are complete until there is actually a place of beneficial user created, and to put the matter additionally, do you contend that your works are completed simply because you have a diversion dam and pipeline and a box without a wheel.

Mr. Wyman:

Why certainly, what kind of a wheel do you think we need

We have completed the diversion works just as the original permit called for.

Mr. Hawley:

You contend then that a wheel is not a part of the diversion works?

Mr. Wyman:

Absolutely no.

Mr. Hawley:

May I ask the question to make the matter clear in the record that the contention is with the ending of the pipeline itself, the works of diversion are completed?

Mr. Wyman:

Absolutely, no question about it.

Mr. Hawley:

It is also suggested at this time that the examination of

the works of diversion as far as completed and as reported by the officials and employees, show that the wing dams or diversion dams are not constructed to solid foundation; that the dam and its various wings and portions are not impervious to flow of water and that a large amount of water is seeping through and under the dam construction. I think that is all we have to offer.

Mr. Wyman:

We have nothing further.

Dated: June 1, 1927

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

IN THE MATTER OF PROOF OF COMPLETION)
OF WORKS ON PERMIT NO. 10415, AND)
PROTEST FILED AGAINST ALLOWANCE OF A) HEARING
CERTIFICATE OF COMPLETION OF WORKS)

Pursuant to notice regularly given by mail, hearing was convened in the office of the Department of Reclamation on the date designated in said notice, and the following appearances were made:

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1 June '27

10415

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(1) The permit holder's proof, as well as the reports of hydrographers and others, especially detailed by the Commissioner of Reclamation to report to him, show that the works of diversion have not been completed in that no wheel has been erected and all of the purported works of diversion fail to accomplish diversion of the water to the place of beneficial user;

(2) The permit holder has unlawfully and without right, permission or authority, so constructed the diversion works so far completed as to cause the water of Clear Lake Creek and Clear Lakes to raise upon the lands of the protestant, Mary E. Syster, flood them, and thereby trespass upon her rights; that no legal authority exists in the permit holder to accomplish this result, and therefore, such portion of the diversion as is accomplished by the raising of the creek and lake level above the natural flow line of the stream and flood the lands of the protestant, constitute trespass and a violation of the statutory and constitutional rights of the protestant, Mary E. Syster;

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10415

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10415

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10415

the works of diversion as far as completed and as reported by the officials and employees, show that the wing dams or diversion dams are not constructed to solid foundation; that the dam and its various wings and portions are not impervious to flow of water and that a large amount of water is seeping through and under the dam construction. I think that is all we have to offer.

Mr. Wyman:

We have nothing further.

Dated: June 1, 1927

10415

PERMIT NO. 10415

CERTIFICATE OF COMPLETION OF WORKS

TO ALL WHOM IT MAY CONCERN:

This is to certify that William C. Hazzard, of Clear Lake, County of Gooding, and State of Idaho, the holder of Permit No. 10415, issued upon Application No. 15399, bearing date of priority of June 29, 1914, authorizing the diversion of 1,000 second feet of the waters of Clear Lake and its feeders, County of Gooding, State of Idaho, for power purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 526 second feet of the waters of Clear Lake and its feeders; that the point of diversion of said waters is in Lot 7, Section 2, Township 9 South, Range 14 East of Boise Meridian; and that the place of intended use of said water is at the foot of Devil's Washboard, N. 81° 00' E. 576 feet from the southeast corner of the SW¼ of Section 2, Township 9 South, Range 14 East of Boise Meridian.

Witness my hand this 1st day of June, A. D. 1927.

GEO. N. CARTER,
Commissioner of Reclamation.

(SEAL)

PERMIT NO. 10415

CERTIFICATE OF COMPLETION OF WORKS

TO ALL WHOM IT MAY CONCERN:

This is to certify that William C. Hazzard, of Clear Lake, County of Gooding, and State of Idaho, the holder of Permit No. 10415, issued upon Application No. 15399, bearing date of priority of June 29, 1914, authorizing the diversion of 1,000 second feet of the waters of Clear Lake and its feeders, County of Gooding, State of Idaho, for power purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 526 second feet of the waters of Clear Lake and its feeders; that the point of diversion of said waters is in Lot 7, Section 2, Township 9 South, Range 14 East of Boise Meridian; and that the place of intended use of said water is at the foot of Devil's Washboard, N. 81° 00' E. 576 feet from the southeast corner of the SW¼ of Section 2, Township 9 South, Range 14 East of Boise Meridian.

Witness my hand this 1st day of June, A. D. 1927.

GEO. N. CARTER,
Commissioner of Reclamation.

(SEAL)

10415

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

IN THE MATTER OF PROOF OF COMPLETION OF WORKS UNDER THE TERMS AND PROVISIONS OF PERMIT NO. 10415

ORDER

WHEREAS, WM. C. HAZZARD, the record holder of Permit No. 10415, gave notice to the Commissioner of Reclamation under date of March 12, 1927, that he would be prepared to make proof of completion of works required by the said permit on the 21st day of May, 1927, before the Clerk of the District Court of Twin Falls County, at Twin Falls, Idaho; and,

WHEREAS, Publication of notice of intention to make proof regularly appeared in the Gooding Leader, a newspaper of general circulation in Gooding County, Idaho, in which county the said works of diversion are located, all as evidenced by publisher's affidavit, which is on file with the said Permit No. 10415; and,

WHEREAS, The depositions of the record holder, WM. C. HAZZARD, and of two witnesses, to-wit: W. A. KRANER and BARRY DIBBLE, were regularly forwarded to the office of the Department of Reclamation by the said Clerk of the District Court of Twin Falls County; and,

WHEREAS, MARY E. SYSTER, the record holder of subsequent permits, Nos. 13362, 13363 and 16551, filed an objection to the issuance of a Certificate of Completion of Works of the said Permit No. 10415; and,

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WHEREAS, After an examination of the said objection, a hearing was regularly called for the First day of June, 1927, at the office of the Department of Reclamation, Capitol Building, Boise, Idaho, at which time opportunity was to be given to MARY E. SYSTER, to present such evidence by affidavit or otherwise in support of her objections to the issuance of a Certificate of Completion of Works, and the hearing being regularly convened and various appearances being made, both on behalf of MARY E. SYSTER and WM. C. HAZZARD, all as more fully set out in a record of said hearing, which appears with the other documents in the file of the said Permit No. 10415; and,

WHEREAS, After a consideration of all evidence introduced at said hearing, the statement of measured discharge of the diversion works involved, as such measurement was made by the United States Geological Survey in co-operation with the Department of Reclamation, and an examination of the physical works by the Department of Reclamation, it is found that WM. C. HAZZARD, record holder of said Permit No. 10415, is entitled to a Certificate of Completion of Works to the extent of 526 cubic feet per second:

NOW, THEREFORE, It is hereby ordered that such Certificate of Completion of Works issue upon payment of the statutory fees in the case.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office, at Boise, Idaho, this First day of June, 1927.

Geo. N. Carter

Commissioner of Reclamation

10415

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

IN THE MATTER OF PROOF OF COMPLETION)
OF WORKS ON PERMIT NO. 10415, AND)
PROTEST FILED AGAINST ALLOWANCE OF A) HEARING
CERTIFICATE OF COMPLETION OF WORKS)

Pursuant to notice regularly given by mail, hearing was convened in the office of the Department of Reclamation on the date designated in said notice, and the following appearances were made:

On behalf of Permit Holder: Wm. C. Hazzard, and his attorney, H. C. Wyman.

On behalf of Protestant, Mary E. Syster: Her attorney, Jess B. Hawley.

The Permit Holder indicating that he was willing to stand upon the depositions and proof offered in the case, an affidavit of Charles B. Smith, Civil Engineer, was offered by Mr. Hawley, and admitted, marked "Exhibit A Protestant"; whereupon the following statement was made by Mr. Hawley:

We desire to offer the affidavit of Charles B. Smith as part of the file in the case. There is no further proof to be made by us; we have considered that the Commissioner has before him the reports of his hydrographers, and with the affidavit of Mr. Smith, we feel the proof is sufficient to reduce the proven diversion as that was measured on May 21.

As to the general objections that we have, I might make those in the record at this time, though I rather believe they are legal problems, legal questions, which might more properly be raised in some other form. It is largely because of

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the fact that the objections are to the form of the proof, to the assumptions indulged in by the Permit Holder, that we do not present any further proof than the affidavit of Mr. Smith. In order that the record might be clear, however, we desire to raise these points:

(1) The permit holder's proof, as well as the reports of hydrographers and others, especially detailed by the Commissioner of Reclamation to report to him, show that the works of diversion have not been completed in that no wheel has been erected and all of the purported works of diversion fail to accomplish diversion of the water to the place of beneficial user;

(2) The permit holder has unlawfully and without right, permission or authority, so constructed the diversion works so far completed as to cause the water of Clear Lake Creek and Clear Lakes to raise upon the lands of the protestant, Mary E. Syster, flood them, and thereby trespass upon her rights; that no legal authority exists in the permit holder to accomplish this result, and therefore, such portion of the diversion as is accomplished by the raising of the creek and lake level above the natural flow line of the stream and flood the lands of the protestant, constitute trespass and a violation of the statutory and constitutional rights of the protestant, Mary E. Syster;

(3) The amount of diversion which would be accomplished by the existing works without trespass upon the lands of the protestant is not in excess of 301 second feet and is in fact less than that amount.

The protestant further questions that the purported permit holder, William Hazzard, is in truth or in fact the actual permit holder, and further questions the right of Mr. Hazzard to make proof of completion of works under said permit.

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This, I believe, is a statement of position of Mrs. Syster, and I assume that there is no further statement required, and I have no further proof to offer than the affidavit.

Mr. Wyman:

The legality of some of the questions raised by Mr. Hawley can only be determined in the District Court.

The records of this office show Mr. Hazzard to be the owner of the permit and that he is the record owner of the diversion works, and no proof has been offered by the protestant to the contrary.

The only question apparently is the amount of water the department should grant in the certificate. I think that the Commissioner has no doubt of the results of the hydrographers of his office, in addition to that of the affidavit of Mr. Paulsen, the Government hydrographers and his observers, as to the amount of water which the pipeline and the headgates and the dam is capable of diverting. Indeed, it is doubtful in the first place whether or not Mr. Smith was there at the time Mr. Paulsen and Mr. Tolman took the second measurement. I think they can show very conclusively that Mr. Smith was not there in person. He saw the first measurement which was very near 301 second feet.

Now this department is governed by Section 5570 and those relating to proof of completion of works and not the quantity of water that there may be in Clear Lakes that can be applied to beneficial use. How much water can finally be secured can only be proven at the time we apply for beneficial use. It might well be found that there is a hole in the bottom of Clear Lakes that is letting water either around the sides or through to Snake River. We have until we make our final proof of beneficial use to secure as much water as we can under the limit of the diversionworks at this time and the limit of our original application.

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The report of Mr. Tolman, the engineer of this department, shows that the works are capable of developing 1,000 cubic feet. We have evidence to show that some 750 cubic feet can be diverted by the present diversion work.

The legal questions that Mr. Hawley raised and that of trespass are not before this court, so that we rest upon the report of this office.

Mr. Hawley:

May I ask you a question, Mr. Wyman? Is it your contention that the works of diversion are complete until there is actually a place of beneficial user created, and to put the matter additionally, do you contend that your works are completed simply because you have a diversion dam and pipeline and a box without a wheel.

Mr. Wyman:

Why certainly, what kind of a wheel do you think we need

****

We have completed the diversion works just as the original permit called for.

Mr. Hawley:

You contend then that a wheel is not a part of the diversion works?

Mr. Wyman:

Absolutely no.

Mr. Hawley:

May I ask the question to make the matter clear in the record that the contention is with the ending of the pipeline itself, the works of diversion are completed?

Mr. Wyman:

Absolutely, no question about it.

Mr. Hawley:

It is also suggested at this time that the examination of

the works of diversion as far as completed and as reported by the officials and employees, show that the wing dams or diversion dams are not constructed to solid foundation; that the dam and its various wings and portions are not impervious to flow of water and that a large amount of water is seeping through and under the dam construction. I think that is all we have to offer.

Mr. Wyman:

We have nothing further.

DATED: JUNE 1, 1927

10115

BEFORE THE DEPARTMENT OF RECLAMATION

STATE OF IDAHO

In the Matter of Proof of Completion of Works Under Permit, 10,415.) AFFIDAVIT OF CHAS. B. SMITH.

STATE OF IDAHO)
) ss
County of Ada)

CHAS. B. SMITH, being first duly sworn, deposes and says;

I am by profession, a Civil Engineer, a graduate of the Utah Agricultural College with the degree of Batchelor of Science in Civil Engineering. I am also a duly licensed Engineer of the State of Idaho. I have practiced my profession in the State of Idaho uninterruptedly for the past twenty-four years, excepting for about two years service in the Engineering Corps of the United States Army during the World War. As part of my professional work, I have been obliged to learn and practice hydrography in its various branches, particularly with reference to measurement of stream flows and reservoir contents.

I have personally examined Clear Lakes Creek and Clear Lakes and the places described in Permit 10,415 during the past two months and I am familiar with them. I was present at the measurements of the stream made by C. G. Paulson, acting for the Commissioner of Reclamation of the State of Idaho. At the time that his measurements were made the diversion works constructed under Permit 10,415 had raised the natural level of Clear Lakes approximately 1.36 feet.

1-DC

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Rec'd 1 June '27

That in my opinion there was stored water diverted and measured during the period of measurement by the said C. G. Paulson to the extent of 225 second feet. That deducting this stored flowage there would remain 301 second feet of the natural flow of said Clear Lakes and Clear Lakes Creek being diverted by said diversion works. That in my judgment and opinion with losses properly accounted for under the constructed diversion works and with the natural flow of the stream alone without storage, the amount of water which the said diversion works were capable of diverting on May 21, 1927 (and said amount has not in my judgment increased since that time) would be much less than 301 second feet.

Further deponent sayeth not.

Chas. B. Smith

Subscribed and sworn to before me this 1 day of June, 1927.

Notary Public for Idaho,
Residence; Boise, Idaho.

2-DC

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

IN THE MATTER OF PROTEST AGAINST PROOF OF COMPLETION OF WORKS AND OBJECTION TO ISSUANCE OF CERTIFICATE OF COMPLETION OF WORKS UNDER PERMIT NO. 10415.

MARY E. SYSTER,
Contestant,

And

WM. C. HAZZARD,
Contestee.

NOTICE OF HEARING

You, and each of you, are hereby notified that on the First day of June, 1927, at ten o'clock A. M., at the office of the Department of Reclamation, Capitol Building, Boise, Idaho, a hearing will be held in the matter of contest against proof of completion of works under said permit No. 10415;

That the contestant and contestee herein may submit such evidence, preferably by affidavit, in support of their objections and depositions of proof of completion of works as they may desire, or may offer such argument as may support their respective allegations.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office, at Boise, Idaho, this 25th day of May, 1927.

Geo. N. Carter
Commissioner of Reclamation

10415

PERMIT NO. 10415

Proof of Completion of Works

DEPOSITION OF HOLDER

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. William C. Hazzard, age 56, residence Clear Lake, Gooding County, Idaho, farmer, Post Office address, Buhl, Idaho.

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business, your position with reference to same, and your authority for appearing in its behalf.

Ans. I am acting for myself.

Ques. 3. State number and date of permit, amount of water you are authorized to divert, source, and point of diversion.

Ans. No. 10415, Date July 8th, 1914, 1000 cu. ft. per sec. , Clear Lake and its feeders, Lot 7 Sec. 2 TWP. 9S R 14 E.B.M., N 54° 08' E 1685.5 feet from SE corner of SW Quarter of Sec. 2 TWP. 9S R 14E.B.M.

Ques. 4. State purpose for which water is to be used, and, if for irrigation, state the number of acres and give description of the land you intend to reclaim.

Ans. Power purposes.

Ques. 5. State whether or not the water has been turned into your works of diversion, and, if so, when and to what extent.

Ans. Yes, May 20th 1927, 600 cu. ft. per second.

Ques. 6. State whether or not the works of diversion are fully completed, and whether or not they comply in all respects with the terms of the permit.

Ans. The works of diversion are fully completed and comply with the terms of the permit except as stated below.

Ques. 7. If the works of diversion do not comply with all the terms of your permit, state fully those particulars in which there is any variance.

Ans. Dam is higher and longer, with one steel pipe line instead of two wood stave pipe lines

Ques. 8. Give description of works, state dimensions and capacity of each part, and give cost of same.

Ans.

8. Ans. Rock filled, concrete and earth dam, maximum height 15 feet, length 225 feet, concrete spillway, length of structure 50 feet, maximum height 16 feet, provided with seven openings each with clear length of 6 foot 6 inches, water depth 5 feet controlled by flashboards, gates structure concrete and steel with two steel gates installed, gates 10 x 11 feet installed, one riveted steel pipe 90 inch diameter and 1127 feet long carrying water to the point of intended use, capacity of pipe 750 cu. ft. per second, head of works capacity 1000 cu. ft. per second. Cost of works $100,000.00.

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was prescribed and signed in my presence, at the request of the Water Users Association, because of the fact that the State of Idaho, on this 21st day of May A. D. 1927

Harry L. Parsons
Clerk of the District Court of Twin Falls County, Idaho.

My Commission expires

10415

PERMIT NO. 10415

Proof of Completion of Works

DEPOSITION OF HOLDER

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. William C. Hazzard, age 56, residence Clear Lake, Gooding County, Idaho, farmer, Post Office address, Buhl, Idaho.

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business, your position with reference to same, and your authority for appearing in its behalf.

Ans. I am acting for myself.

Ques. 3. State number and date of permit, amount of water you are authorized to divert, source, and point of diversion.

Ans. No. 10415, Date July 8th, 1914, 1000 cu. ft. per sec. , Clear Lake and its feeders, Lot 7 Sec. 2 TWP. 9S R 14 E.B.M., N 54° .08'E 1685.5 feet from SE corner of SW Quarter of Sec. 2 TWP. 9S R 14E.B.M.

Ques. 4. State purpose for which water is to be used, and, if for irrigation, state the number of acres and give description of the land you intend to reclaim.

Ans. Power purposes.

Ques. 5. State whether or not the water has been turned into your works of diversion, and, if so, when and to what extent.

Ans. Yes, May 20th 1927, 600 cu. ft. per second.

Ques. 6. State whether or not the works of diversion are fully completed, and whether or not they comply in all respects with the terms of the permit.

Ans. The works of diversion are fully completed and comply with the terms of the permit except as stated below.

Ques. 7. If the works of diversion do not comply with all the terms of your permit, state fully those particulars in which there is any variance.

Ans. Dam is higher and longer, with one steel pipe line instead of two wood stave pipe lines

Ques. 8. Give description of works, state dimensions and capacity of each part, and give cost of same.

Ans.

8. Ans. Rock filled, concrete and earth dam, maximum height 15 feet, length 225 feet; concrete spillway, length of structure 60 feet, maximum height 16 feet, provided with seven openings each with clear length of 6 foot 6 inches, water depth 5 feet controlled by flashboards; gates structure concrete and steel with two steel gates installed, gates 10 x 14 feet installed; one riveted steel pipe 90 inch diameter and 1127 feet long carrying water to point of intended use, capacity of pipe 750 cu. ft. per second; balance of works capacity 1000 cu. ft. per second. Cost of works $100,000.00.

PERMIT NO. 10415

Proof of Completion of Works

DEPOSITION OF HOLDER

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. William C. Hazzard, age 56, residence Clear Lake, Gooding County, Idaho, farmer, Post Office address, Buhl, Idaho.

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business, your position with reference to same, and your authority for appearing in its behalf.

Ans. I am acting for myself.

Ques. 3. State number and date of permit, amount of water you are authorized to divert, source, and point of diversion.

Ans. No. 10415, Date July 8th, 1914, 1000 cu. ft. per sec. , Clear Lake and its feeders, Lot 7 Sec. 2 TWP. 9S R 14 E.B.M., N 54° .08'E 1685.5 feet from SE corner of SW Quarter of Sec. 2 TWP. 9S R 14E.B.Ml

Ques. 4. State purpose for which water is to be used, and, if for irrigation, state the number of acres and give description of the land you intend to reclaim.

Ans. Power purposes.

Ques. 5. State whether or not the water has been turned into your works of diversion, and, if so, when and to what extent.

Ans. Yes, May 20th 1927, 600 cu. ft. per second.

Ques. 6. State whether or not the works of diversion are fully completed, and whether or not they comply in all respects with the terms of the permit.

Ans. The works of diversion are fully completed and comply with the terms of the permit except as stated below.

Ques. 7. If the works of diversion do not comply with all the terms of your permit, state fully those particulars in which there is any variance.

Ans. Dam is higher and longer, with one steel pipe line instead of [illegible]

(Sign here.) William C. Hazzard

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, in ~~me in my office at the County Court House.~~ at Twin Falls, County of Twin Falls, State of Idaho, on this 21st day of May A. D. ## 1927

Harry L. Parsons
Clerk of the District ~~Notary Public~~
Court of Twin Falls County, Idaho.

My Commission expires

10415

Form 14

The Depositions of two Witnesses, in this form, taken separately, required in each case.

Permit No. 10415

Proof of Completion of Works

DEPOSITION OF WITNESS

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. W. A. Kraner, age 47 - Reside at 795 Sutter St., San Francisco, Calif. Occupation, Contractor. P.O. address 707 Balboa Bldg., San Francisco, Calif.

Ques. 2. Are you acquainted with W. C. Hazzard, the holder of Permit No. 10415 authorizing the diversion of 1000 second-feet of the waters of Clear Lake & its feeders, at outlet of lake for power purposes? How long have you known him, and where does he reside?

Ans. One year, he resides at Clear Lake, Gooding Co, Idaho.

Ques. 3. Have you read or heard read said Permit No. 10415, and are you familiar with its terms and conditions?

Ans. Yes.

Ques. 4. (If for irrigation purposes). Are you acquainted with the land proposed to be irrigated under said permit? If so, describe same, state its character, and give your estimate of the amount of water required for its profitable cultivation.

Ans.

Ques. 5. Are the works of diversion fully completed and of sufficient capacity to convey the entire amount of water set out in the permit from point of diversion to place of use?

Ans. Dam, spillway & headworks fully completed for 1000 second. feet. ~~Completed pipe line has a capacity of 750 second feet capacity.~~

Ques. 6. Describe the works of diversion as they now exist, and give your estimate of their capacity.

Ans. Rock fill, concrete & earth dam, maximum height 15 feet, length 225 feet, concrete spillway, length 60 ft., maximum height 16 ft. provided with seven 6'6" openings, water depth 5 feet controlled by flash boards; gate structure concrete & steel with two steel gates installed, each 10' x 14'; one riveted steel pipe 90" diameter and 1127' long. Works have capacity of 1000 cu. ft. per sec. except pipe line which is 750 cu. ft. per sec. capacity.

(Sign here.) W. A. Kraner

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Twin Falls, County of Twin Falls, State of Idaho, on this 21st day of May A. D. 1917

Harry G Parsons
Clerk of The District Court
Twin Falls County, Idaho

10415

Form 14

The Depositions of two Witnesses, in this form, taken separately, required in each case.

Permit No. 10415

Proof of Completion of Works

DEPOSITION OF WITNESS

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Barry Dibble, 45, Redlands, Calif, Consulting Engineer, Redlands, California.

Ques. 2. Are you acquainted with William C. Hazzard, the holder of Permit No. 10415, authorizing the diversion of 1000 second-feet of the waters of Clear Lake and its feeders diverted, at outlet of lake for power purposes? How long have you known him, and where does he reside?

Ans. Eight years, Clear Lake, Gooding County, Idaho

Ques. 3. Have you read or heard read said Permit No. 10415, and are you familiar with its terms and conditions?

Ans. Yes.

Ques. 4. (If for irrigation purposes). Are you acquainted with the land proposed to be irrigated under said permit? If so, describe same, state its character, and give your estimate of the amount of water required for its profitable cultivation.

Ans.

Ques. 5. Are the works of diversion fully completed and of sufficient capacity to convey the entire amount of water set out in the permit from point of diversion to place of use?

Ans. Dam, spillway and head works fully completed for 1000 sec. feet. Completed pipe line has capacity of 750 second feet.

Ques. 6. Describe the works of diversion as they now exist, and give your estimate of their capacity.

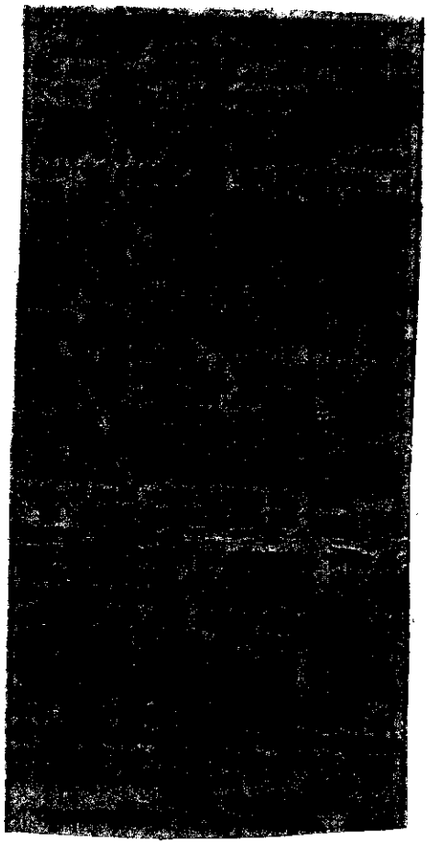
Ans. Rock fill, concrete and earth dam, maximum height 15 feet length 225 feet; concrete spillway length 60 feet maximum height 16 feet; provided with seven 6'6" openings water depth 5 feet controlled by flash boards. Gate structure concrete and steel with two steel gates installed each 10 ft. by 14 ft. One riveted steel pipe 90" diameter and 1127 feet long. Works have capacity of 1000 second feet except pipe which is 750 second feet.

(Sign here.) Barry Dibble

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Twin Falls, County of Twin Falls, State of Idaho, on this 21st day of May A. D. 1917

Harry L Parsons
Clerk of District Court
Twin Falls County, Idaho

10415



PUBLISHER'S AFFIDAVIT

COUNTY OF GOODING, }
STATE OF IDAHO } ss.

F. F. Swan, being first duly sworn, deposes and says that he is Publisher of The Gooding Leader, a newspaper of general circulation in Gooding County, Idaho, published weekly in the City of Gooding, in said County and State; that said newspaper has been published in said county uninterruptedly and continuously for more than seventy-eight consecutive weeks prior to the first publication of the attached notice; that a notice, of which the annexed is a true copy, was published in the said newspaper for at least Five consecutive issues, commencing with the issue dated Mar. 31, 1927 and ending with the issue dated Apr 28, 1927 in the regular and entire issue of said newspaper and not in any supplement thereof.

F. F. Swan
Affiant's Signature.

Subscribed and sworn to before me this 30th day of April 1927

P. T. Lutzken
Notary Public.
Residing at Gooding, Idaho.

10415

Permit 10415

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

Boise, Idaho, May 21, 1927.

Mr. Geo. N. Carter,
Commissioner of Reclamation,
Boise, Idaho.

Dear Mr. Carter:-

For your information I am listing results of two discharge measurements made May 20, 1927, at the request of Mr. Barry Dibble, by me and assisted by Mr. F. A. Tolman, of the flow which was diverted through the newly constructed 7-1/2-foot steel conduit 1127 feet in length at the W. C. Hazzard power site at Clear Lakes near Buhl, Idaho:

	Time of Measurement	Lake Gage Height	Forebay Gage Height
No.1			
Discharge, 314 sec.-ft. ---	2:25-3:55 p.m.	1.36' - 2:15 p.m.	2.18' - 2:25 p.m.
		1.36' - 2:37 p.m.	2.16' - 2:35 p.m.
		1.33' - 2:50 p.m.	2.14' - 3:05 p.m.
		1.32' - 3:05 p.m.	2.11' - 3:35 p.m.
		1.30' - 3:35 p.m.	2.08' - 3:58 p.m.
		1.27' - 4:00 p.m.	
During period of measurement, stage lowered in lake -.09'; in forebay -.10'.			
No.2			
Discharge, 526 sec.-ft. ---	4:35-5:25 p.m.	1.15' - 4:37 p.m.	1.30' - 4:35 p.m.
		1.01' - 4:48 p.m.	1.13' - 4:45 p.m.
		.92' - 4:57 p.m.	.90' - 4:55 p.m.
		.80' - 5:07 p.m.	.60' - 5:05 p.m.
		.67' - 5:21 p.m.	.10' - 5:19 p.m.
		.60' - 5:28 p.m.	-.40'*-5:27 p.m.
			*About.
During period of measurement, stage lowered in lake -.55'; in forebay about -1.70'.			

The flow of the water through the conduit was controlled by a valve, Butterfly type, at the lower end of the pipe line. In the case of the first measurement this valve was about 4/10 open; during the second measurement the valve was approximately 2/3 open.

Both measurements were made in the recently constructed head race, 120 feet above the concrete head works or entrance to the steel conduit. The spillway was closed tightly by means of stop-logs, and the resultant leakage through these gates was negligible -- probably not more than 5 miners inches at most. The only leakage below the point of measurements as observed occurred

in the right steel gate of the concrete head works which has been installed for the probable future use of an additional steel conduit which may be installed similar to the one now in place. This leakage in the case of each measurement was estimated at 1 to 1.5 second-feet. No leakage whatsoever was observed in the 1127 feet of steel conduit.

The section of head race 120 feet in length below the point of measurement has been thoroughly silted and appeared to have no leakage whatsoever. This was substantiated by the fact that no discoloration was noticeable in the flow outside and adjacent to this section of the head race when the process of silting in the head race was in progress a short time prior to the making of the discharge measurements. However, considerable leakage in the head race above the point of measurement was noticeable. During period the second measurement was made, this leakage was noticeably less, probably one half of that at the time the first measurement was made when the stage in the lake and forebay was considerably higher, as shown in the tabulated gage height record above, than at the time the second measurement was made.

The head race and forebay was practically full during period of the first measurement. During the second measurement, however, considerable storage was withdrawn as indicated by the observed rapid decrease in stage in the forebay and lake. This doubtless resulted in a diminishing flow as the measurement progressed, and it is therefore not unreasonable to assume that at the beginning of the second measurement the conduit was discharging considerably in excess of the mean measured flow of 535 second-feet.

Yours very truly,

O. H. Landers

District Engineer.

CC:Mr.Dibble

10415

BEFORE THE DEPARTMENT OF RECLAMATION

STATE OF IDAHO.

In the Matter of Proof of Completion of Works Under Permit No. 10, 415.	OBJECTION TO ISSUANCE OF CERTIFICATE OF COMPLETION.

COMES NOW the protestant, Mary E. Syster, and does protest against the issuance of a certificate of completion of works as prayed for by the alleged owner and holder of said permit No. 10,415, William C. Hazzard, and for grounds of her objection, alleges:

I.

That the said Mary E. Syster is the owner and holder of permit No. 13,362, permit No. 13,363 and permit No. 16,551, subsequent and junior in date to said permit No. 10,415.

II.

That this protestant is informed and believed that the said William C. Hazzard is not the sole owner of the said permit No. 10,415 nor the person entitled to give notice or make proof of completion of works of diversion as required by the statutes of the State of Idaho.

III.

That the work done under the said permit No. 10,415 has not and can not enable the diversion of water under said permit.

Rec'd May 18-'27

IV.

That the said works of diversion constructed under said permit No. 10,415 are neither permanent works or works contemplated under the terms of said permit.

V.

That the said works of diversion are not completed so as to accomplish the diversion of any certain or continuous quantity of water from the Clear Lake or Clear Lake Creek or outlet.

VI.

That the notice required to be published under the statutes of the State of Idaho as condition precedent to completion of works has not been given as required by law.

Your petitioner therefore prays:

(a) That a certificate of completion of works shall not issue.

(b) That a date be fixed for the presentation by this protestant of evidence and argument in support of this protest.

(c) That a personal examination of the said works be had by the Honorable Commissioner of Reclamation of the State of Idaho.

Mary E. Lysle

Protestant.

10415

These objections shall be taken to be an affidavit by this affiant. Further, affiant sayeth nothing.

Mary E Lyatt

Subscribed and Sworn to before me this 17 day of May, 1927.

John A Noble Notary Public
Residing at Buhl Idaho.

3-LL

May 17, 1927

Re: Permit No. 10415

MR. H. C. WYMAN
Attorney at Law
Boise City National Bank Bldg.
Boise, Idaho

Dear Sir:

Enclosed you will find order continuing hearing on application for extension of time to make proof of completion of works under Permit No. 10415.

I trust that the said order is satisfactory to all involved.

Very truly yours,

Commissioner of Reclamation

CEC:E
Enclosure

10415

May 17, 1927

Re: Permit No. 10415

MR. WILLIAM C. HAZZARD
Buhl
I d a h o

Dear Sir:

Enclosed you will find order continuing hearing on application for extension of time to make proof of completion of works under Permit No. 10415.

I trust that the said order is satisfactory to all involved.

Very truly yours,

Commissioner of Reclamation

GNC:E
Enclosure

10415

May 17, 1927

Re: Permit No. 10415

MESSRS. HAWLEY & HAWLEY
Attorneys at Law
Boise, Idaho

Gentlemen:

Enclosed you will find order continuing hearing on application for extension of time to make proof of completion of works under Permit No. 10415.

I trust that the said order is satisfactory to all involved.

Very truly yours,

Commissioner of Reclamation

GNC:E
Enclosure

10415

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

RE: APPLICATION FOR EXTENSION)
OF TIME FOR COMPLETION OF)
WORKS UNDER HOUSE BILL NO.) O R D E R
21, SESSION LAWS OF 1927,)
PERMIT NO. 10415)

WHEREAS, WILLIAM C. HAZZARD, of Buhl, Idaho, holder of Permit No. 10415 for appropriation of public waters of the State of Idaho, has filed an application to extend the time for completion of works under the said Permit to November 21, 1927, completion of works of said permit now being required on or before May 21, 1927; and

WHEREAS, Notice for publication of hearing on said application for extension of time has been published, all as required by law, and the 19th day of May, 1927 having been fixed as the date for hearing any protests or evidence which may be presented against the allowance of an extension of time for completion of works; and

WHEREAS, Counsel for protestant, MARY E. SYSTER, has requested that the said hearing be continued until June 1, 1927;

NOW, THEREFORE, It is hereby ordered that the said hearing, as fixed in the aforesaid mentioned notice, be continued until ten o'clock A. M., June 1, 1927, at the office of the Department of Reclamation, Capitol Building, Boise, Idaho.

WITNESS, The hand and seal of the Commissioner of Reclamation, this 17th day of May, 1927.

Geo. N. Carter
Commissioner of Reclamation

10415

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

RE: APPLICATION FOR EXTENSION)
OF TIME FOR COMPLETION OF)
WORKS UNDER HOUSE BILL NO.) ORDER
21, SESSION LAWS OF 1927,)
PERMIT NO. 10415)

WHEREAS, WILLIAM C. HAZZARD, of Buhl, Idaho, holder of Permit No. 10415 for appropriation of public waters of the State of Idaho, has filed an application to extend the time for completion of works under the said Permit to November 21, 1927, completion of works of said permit now being required on or before May 21, 1927; and

WHEREAS, Notice for publication of hearing on said application for extension of time has been published, all as required by law and the 19th day of May, 1927 having been fixed as the date for hearing any protests or evidence which may be presented against the allowance of an extension of time for completion of works; and

WHEREAS, Counsel for protestant, MARY E. SYSTER, has requested that the said hearing be continued until June 1, 1927:

NOW, THEREFORE, It is hereby ordered that the said hearing, as fixed in the aforesaid mentioned notice, be continued until ten o'clock A. M., June 1, 1927, at the office of the Department of Reclamation, Capitol Building, Boise, Idaho.

WITNESS, The hand and seal of the Commissioner of Reclamation, this 17th day of May, 1927.

Geo. N. Carter
Commissioner of Reclamation

10415

Form 23

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

REPORT OF ENGINEER

PERMIT NO._____

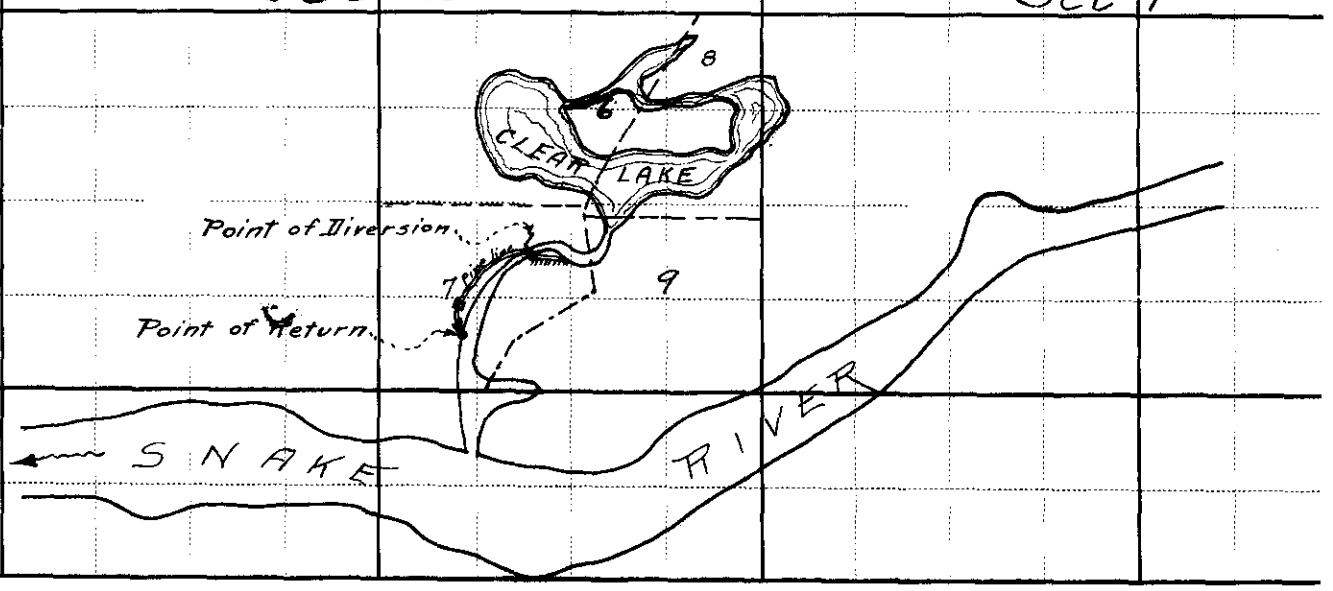
REPORT ON PROOF OF_____

Sec 35

Sec 36

Sec 2

Sec 1



SCALE: 2 INCHES EQUALS 1 MILE. DRAW MAP IN INK.

10415

Form 23

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

REPORT OF ENGINEER

Permit No. 10415

This proof is for COMP. WORKS In Water District No.

1. Name of applicant: William C. Hazzard

2. Source of water supply: Clear Lake and its feeders

3. Location of point of diversion: Is in the Lot 7 of Section 2

T. 9 S., R. 14 E.B.M. County of Gooding.

4. Describe works as they exist, giving dimensions and capacities of same: Diversion works consist of rock fill, concrete-faced dam, concrete spillway and headgate control structure and riveted steel penstock, 90 inches in diameter and 1128 feet long.

Penstock is equipped with surge pipe and a 54-inch "Butterfly valve" at the outlet end. Capacity of present construction is about 1,000 second feet. See remarks.

5. Water is used for: Power purposes

6. State whether or not water has been turned into works of diversion:

. Lands to be irrigated (If proof is for beneficial use, give exact number of acres in each subdivision of each forty-acre tract. (Describe manner and place of use if for other than irriga-

tion): Location of place of use for power- N. 81°00' E. 576 ft. from the southeast corner of the SW¼ of Sec. 2, Twp. 9 S., R. 14 E., B.M.

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach? Snake River.

Remarks:

This examination was made on the 20th day of May 19 27

10415

(Signed) Fred L. Dohman
Examiner.

Wm. C. Hazzard
Buhl

Permit No. 10415

Examination for COMP. WORKS

County GOODING

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion, and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make a plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him, and make your report only upon actual existing facts and conditions.

R' RKS ON PERMIT NO. 10415

1. Forebay construction consists of a rock-fill dam about 225 feet in length with a maximum height above old stream bed of approximately 15 feet. This dam is faced with a 3" concrete slab, laid on a slope of about 2 - 1 and said to have a cutoff wall for a considerable distance along the toe.

2. Spillway consists of a concrete structure, having seven discharge gate openings, six feet wide and controlled by flash planks. Spillway discharge is over O. G. sections, having a top elevation about five feet below highwater level.

3. Headworks are of concrete, having walls of about 18" minimum thickness, steel trash racks and gates. Outlet gates are installed for 90" steel pipes. One pipe of the above diameter, of 1/4-inch thickness and a length of 1128 feet, has been installed and tested. This pipe rests on timber supports or saddles built of 12" x 12" and 6" x 12" timber, laid on 3" x 12" sills.

4. The pipe is banded by 3" x 5" x 3/8" angle irons, spaced 11' - 4" C. C., with intermediate reinforcing angles of same material, of 120 degrees of circle or about 8 feet in length, riveted to the top of the pipe. The outlet end is equipped with a 54 "Joshua Hendy" Butterfly valve, discharging into open air at the foot of the waterfall, known locally as the "Devils Washboard."

Capacity tests were made by Mr. C. G. Paulsen and the undersigned, two meter measurements being taken at a point about 120 feet above the control headgates. The first one was taken with the valve at the lower end about .4 open and gave a discharge of 314 second feet, with a lowering of water in the lake of .09' and in the forebay of .10'.

During the second measurement, the control valve was open to about .65 of full capacity and gave an indicated discharge of 526 second feet. During this test the lake level dropped .55' and the forebay W. L. dropped 1.7 feet, demonstrating that the full capacity of the present installation is considerably in excess of the available water supply.

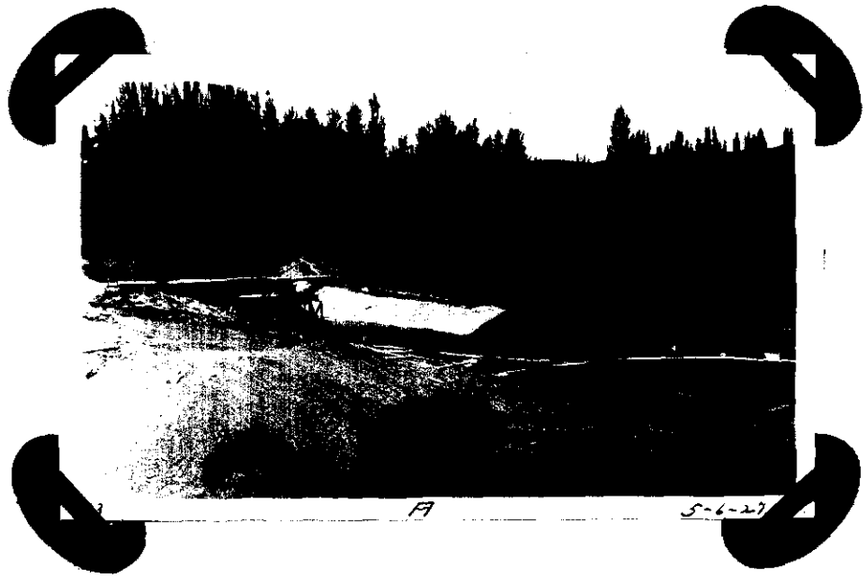
It was noted that leakage which appeared in the old stream bed below the upstream portion of the rockfill dam amounted to 20 second feet (estimated) and was apparently coming from the extreme upper end of the dam. It is quite probable that considerable of this loss can be saved by an extension of the sluicing method heretofore used to stop leakage farther down.

It may be said in this connection that there was no apparent leakage thru the puddled and lined portion of the forebay, located below the point of measurement, either during or after the second test, altho there were at that time quite high velocities, with considerable disturbance of the puddling material, which had been most recently placed over the upper portion of the forebay, and should have resulted in discoloration of water outside the constructed works had there been any leakage through the lower end.

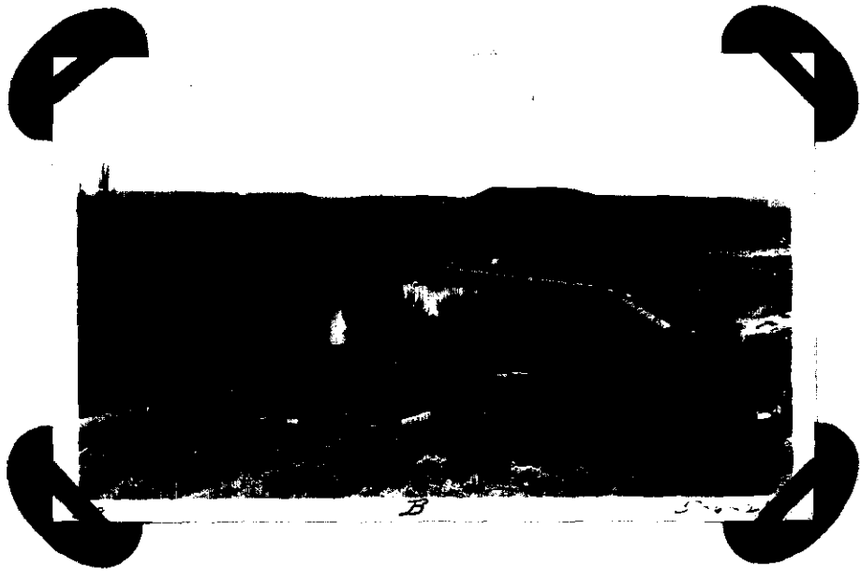
Owing to the fact that this development has been made during a period of about three months time, no finished plans or blue prints are available. A few photographs were obtained, however, which may serve to give a better general idea of what has been accomplished.

May 16-'27

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General view of Forebay looking upstream



View of Pipe location toward outlet



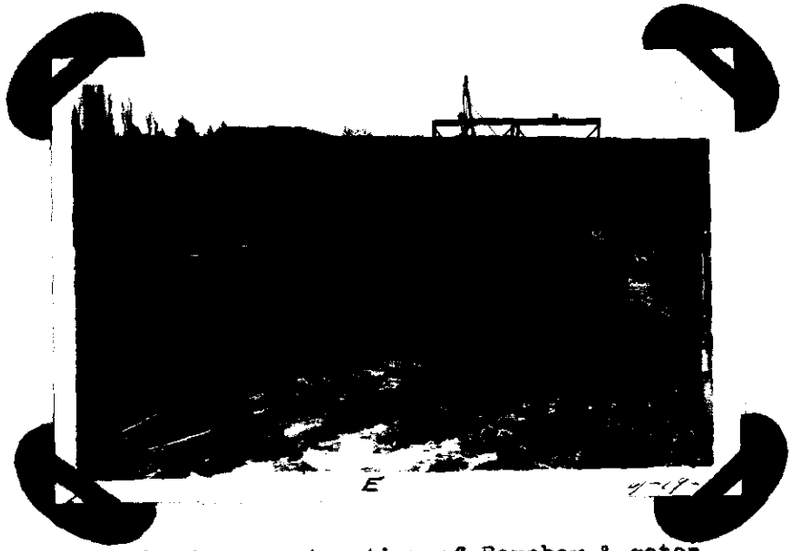
Showing upper portion of pipe and heading

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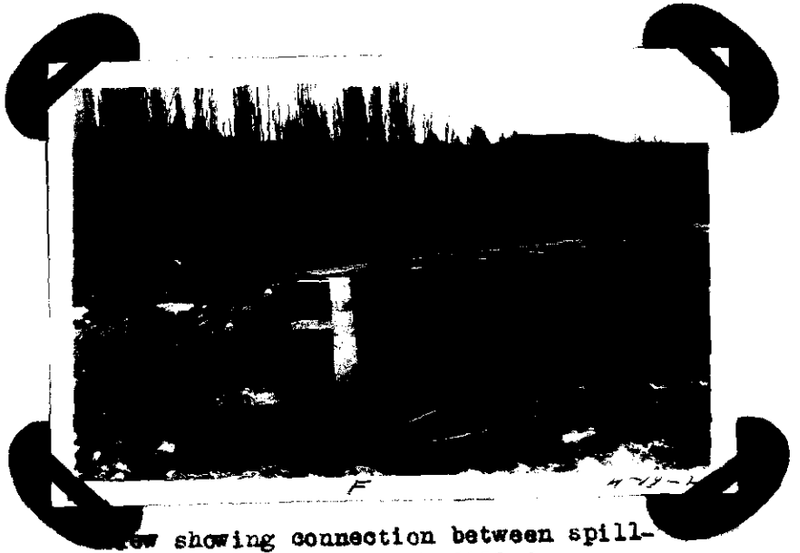
10415



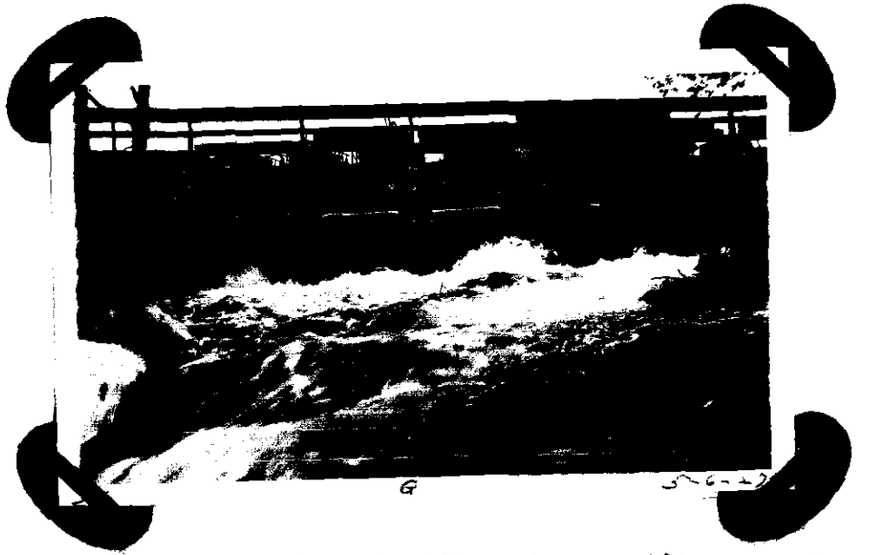
Downstream view of spillway and gates



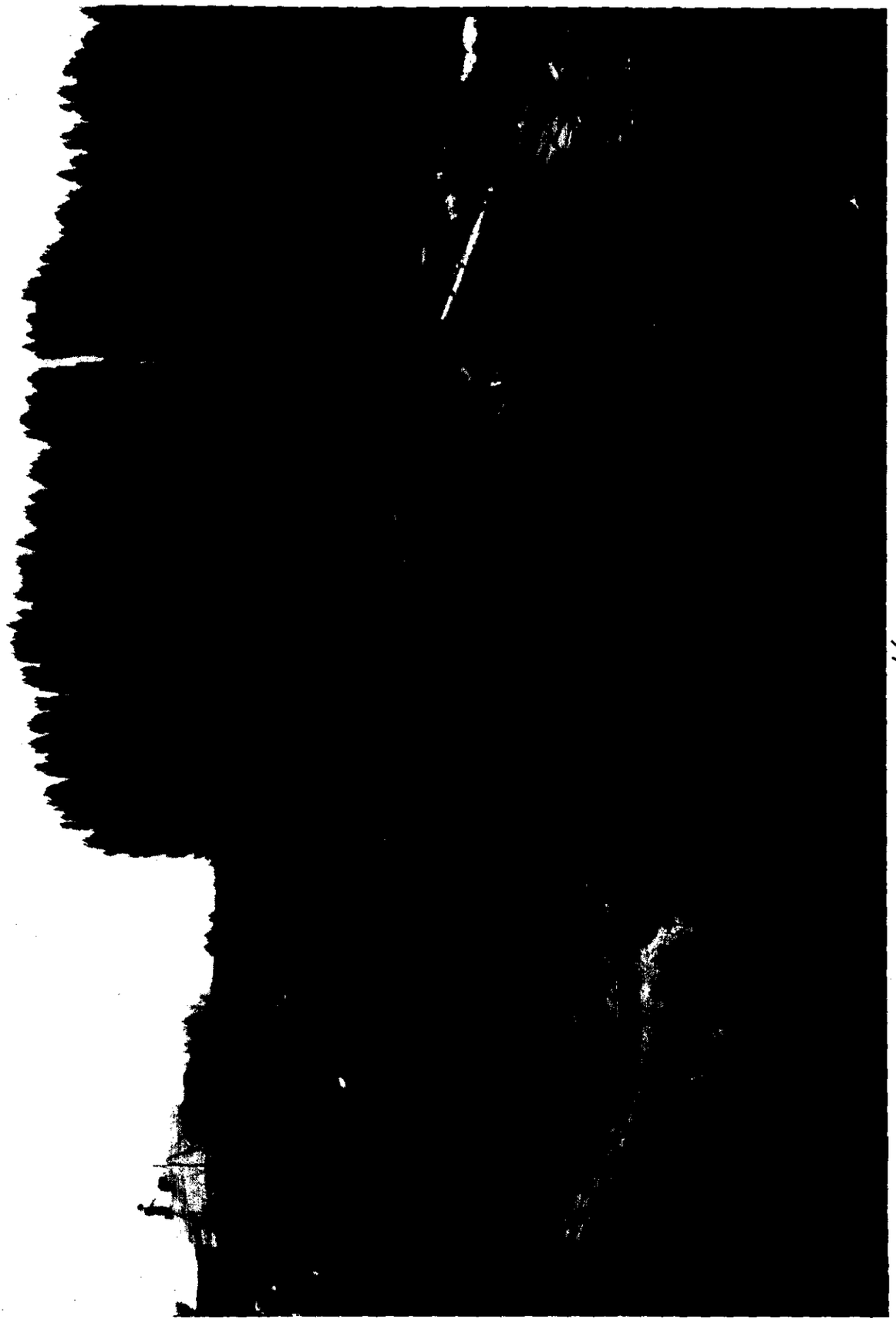
Showing construction of Forebay & gates
Trash racks not in place



...ow showing connection between spill-
way structure and rock-fill dam



Downstream view of spillway in operation



View showing lower section of completed pipe and base
for surge tank

10415

IN THE STATE OF IDAHO

DEPARTMENT OF RECLAMATION.

****

In the Matter of Extension of Time for completion of work under House Bill No. 21, Session Laws of 1927, (the same being Chapter 10, 1927 Session Laws), of Permit No. 10,415.	)	OBJECTIONS TO GRANTING OF EXTENSION.

****

COMES NOW Mary E. Syster and objects to the granting of the extension petitioned by William C. Hazzard on the 27th day of April, 1927, covering permit No. 10,415, issued by a former State Engineer of the State of Idaho, and for objection against the extension of said permit does set forth:

I.

That this affiant and objector is the owner and holder of permits No. 13,362 and No. 13,363, both covering diversion of the waters covered by permit No. 10,415. That said two permits are legally existing permits, but subsequent to said permit No. 10,415.

II.

That if the extension of time is granted as prayed for by Mr. Hazzard it will result in destruction of the rights of priority heretofore given and vested in

1-bw

12 MAY '27

10415

the said applicant by the State of Idaho, under the said permits No. 13,362 and No. 13,363.

III.

That the said William C. Hazzard has had ample opportunity to construct the works for diversion of water, as provided under the terms of said permit No. 10,415, and an extension of time would be an injury and detriment to the permit and rights of this affiant.

IV.

That to extend said permit would violate the Constitutional rights of this affiant, particularly being a violation of Section 3 of Article 15 of the Constitution of the State of Idaho, which provides that

> "the right to divert and appropriate the unappropriated water of any national stream to beneficial uses shall never be denied ******* "

That the effect of an extension would be to deny the right of this affiant to divert and appropriate the unappropriated water of Clear Lake and Clear Creek.

V.

That said extension would be a violation and denial of the rights of this affiant under Section 1 of Article I of the Constitution of the State of Idaho in that it would deny the free, equal and inalienable right of this affiant to acquire, possess and protect her property rights in said permits No. 13,362 and No. 13,363.

VI.

That said extension would be a denial and

violation of the Constitutional rights of this affiant under Section 13 of Article I of the Constitution in that she would be thereby deprived of her property without due process of law.

VII.

That said extension would also be a violation and a denial of the rights of affiant under Section 14 of Article I of the Constitution of the State of Idaho in that her property would be taken for public use without just compensation paid therefor.

VIII.

That said extension would also be a denial and violation of the rights of this affiant under the 14th Amendment to the Constitution of the United States in that the State of Idaho would thereby deprive this affiant of her property without due process of law and deny to her equal protection of the laws. Affiant also questions ownership of the permit.

These objections should be taken to be an affidavit by this affiant.

Further affiant sayeth not.

Mary E Sysler

Subscribed and Sworn to before me this 12 day of May, 1927.

W L Lazure

Notary Public Residing at Buhl, Idaho.

Form No. 22-A

State of Idaho

ENGINEERING DEPARTMENT

BOISE

INSTRUCTIONS

PROOF OF COMPLETION OF WORKS

William C. Hazzard,

c/o The Clerk of the District Court,
Twin Falls, Idaho.

BOISE, IDAHO, May 4, 1927.

DEAR SIR:

I enclose herewith the following forms to be used in connection with proof of completion of works under Permit No. 10415

DEPOSITION OF PERMIT HOLDER,
DEPOSITIONS OF TWO WITNESSES.

In submitting this proof the following instructions should be CAREFULLY followed out, since failure to do so may result in the loss of the permit holder's rights:

1. On May 21, 1927, the date set for proof of completion of works, the enclosed deposition forms (one for permit holder and one each for two witnesses) should be filled out and sworn to, at Twin Falls, before the Clerk of the District Court.

2. When the depositions have been taken they should be mailed to this office, together with affidavit of publication of notice.

When these have been received, together with report of the examining engineer, if everything is properly executed, you will be further advised as to fees due, etc., before certificate is issued.

Yours truly,

GEO. N. CARTER,
Commissioner of Reclamation.
State Engineer.

10415

Form 34

Permit No. 10415

EXTENSION OF TIME FOR COMPLETION OF WORK UNDER HOUSE BILL 21, SESSION LAWS OF 1927.

STATE OF IDAHO, } ss.
County of Ada }

William C. Hazzard of Buhl, State of Idaho being first duly sworn upon his oath, deposes and says:

THAT he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho, No. 10415:

THAT under the terms and conditions of said Permit, Completion of Works thereunder is required by May 21, 19 27: and notice thereof has been duly given.

THAT he has heretofore in good faith performed the following work and taken the following steps to bring about the completion of the said works described under the said Permit, to-wit: That he has expended in the completion of the works more than $65000 of which $40000 has been efficiently and economically expended thereon since March 1, 1927; that he has now employed on the ground for the completion of the dam, pipe line and other works for the diversion of the waters under said permit and conducting the same to the place of intended use, about 50 men with all necessary equipment and sufficient to complete the same before May 21, 1927 unless prevented as hereinafter set forth.

THAT he is/or may become unable to complete the remainder of the said works and submit Proof of Completion of Work within the required time for the following reasons, to-wit: In the event of some act or Acts of God, or man accidental or otherwise, strikes, failure of delivery of machinery and/or material now being shipped to the works, or destruction thereof in whole or part or other contingency impossible to foresee by due diligence.

WHEREFORE he makes application to the Commissioner of Reclamation to extend the time for Completion of Works under the said Permit to November 21, 19 27, pursuant to the provisions of House Bill 21, Session Laws of 1927, without waiving right to make proof under Notice of Completion of Works set for May 21, 1927.

William C. Hazzard
Applicant.

Subscribed and sworn to before me this 27th day of April, 19 27.

M. E. Ballam
Notary Public.

My commission expires Jany 9, 1930. Residing at Boise, Idaho

Date of receipt at the office of the Department of Reclamation, ..., 19.....

APPROVAL OF COMMISSIONER OF RECLAMATION

WHEREAS, Application for an extension of time for completion of Works Under Permit No. ....., has been made by the owner thereof, which application was duly advertised in the ..... of ....., Idaho, for a period of two consecutive weeks, and

WHEREAS, a hearing in regard to the said Application was then duly held at ....., Idaho, on ....., 19....., as specified in the said advertisement above referred to, and;

WHEREAS, after taking into consideration all evidence and testimony introduced at the said hearing it appears that the owner of the said Permit is entitled to a further extension of time within which to complete work,

NOW, THEREFORE, I, George N. Carter, Commissioner of Reclamation of the State of Idaho, by virtue of the authority vested in me under House Bill 21, Sessions Laws of 1927, hereby extend the Time for Completion of Works under Permit to Appropriate the Public Waters of the State of Idaho, No. ....., to ....., 19.....

WITNESS my hand this ..... day of ....., 19.....

Commissioner of Reclamation.

10415

HOUSE BILL 21

SESSION LAWS OF 1927

GRANTING AUTHORITY TO THE COMMISSIONER OF RECLAMATION TO EXTEND THE TIME WITHIN WHICH THE WORK OR WORKS UNDER THE PROVISIONS OF A PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO SHALL BE COMPLETED, AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That in addition to the duties and authority prescribed by Section 5570, Compiled Statutes of Idaho, the Commissioner of Reclamation may upon receipt of an application in such form and setting up such facts as he may designate, requesting an extension of time within which to make proof of completion of works under any permit upon which proof of completion of works is, or may be, required on or before January 20, 1929, extend the time within which such permit holder shall be required to make proof of completion of works upon the said permit or permits, so that the additional time granted shall in no case exceed two years, provided the owner of such permit shall have furnished satisfactory evidence of his good faith, together with a satisfactory showing as to the necessity of such extension of time. **Provided, however,** That upon receipt of such application, and before final action is taken thereon, it shall be the duty of the Commissioner of Reclamation to hold a public hearing at which any and all persons owning or in possession of a right to the use of any waters of a stream or source of supply affected by the said extension, may have an opportunity to be heard, either orally or by affidavits, and **Provided further,** That it shall be the duty of the Commissioner of Reclamation to cause a notice of such hearing to be published at the expense of the applicant, in a newspaper of general circulation in the county in which the works contemplated by said permit are located, for at least two consecutive issues setting forth the number of the permit, the name of its owner or owners, the amount of water called for in said permit the source of supply and the time and place when and where such hearing is to be held. **Provided, also,** that no extension shall be granted under the provisions of this act, unless the application for extension herein referred to shall have been filed in the office of the Department of Reclamation at least twenty days in advance of the date when such proof of completion is due.

Sec. 2. Extension of time for completion of works granted under this act shall automatically extend the time for making proof of application of water to beneficial use.

Sec. 3. Since this act is to provide for the present emergency, it shall remain in force and effect only until January 20, 1929.

Sec. 4. Any emergency existing therefor, this act shall take effect and be in force from and after its passage and approval.

Approved, Feb. 8th, 1927.

REGULATIONS

1. An application for Extension of Time for Completion of Works filed pursuant to the terms of House Bill 21; Session Laws of 1927, must be made on the form prescribed by the Department of Reclamation.

2. The names and addresses of all owners of the permit for which an extension of time is requested must be set forth in the application.

3. The hearing provided for by the said House Bill may be held either at some point in the vicinity of the works contemplated under the Permit in question or at the office of the Department of Reclamation at the discretion of the Commissioner of Reclamation.

4. Upon receipt of an Application for Extension duly executed the Commissioner of Reclamation will designate the time and place at which the said hearing will be held and also designate the newspaper in which the said notice of hearing is to be published for two consecutive issues. A formal notice for publication will be forwarded to the said newspaper. The applicant will be required to pay the cost of publication and transmit or cause to be transmitted a duly executed Proof of Publication to the Department of Reclamation prior to the date set for the hearing.

5. The hearing will be conducted in such manner as deemed advisable by the Commissioner of Reclamation or his Deputy.

Form No. 11-A

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

Date April 27,1927

Publisher, The Leader,
Gooding, Idaho.

DEAR SIR:

Enclosed you will find notice for publication once a week for ~~four~~ two consecutive weeks prior to May 19, 1927, the date set for ~~proof~~ hearing, the expense of the publication to be paid by the applicant, William C. Hazzard, of Buhl, Idaho, to whom you should furnish proof of publication on or prior to the date set for ~~proof~~ hearing.

Please acknowledge receipt of this notice and furnish this office with a copy of the first publication.

Very truly yours,

GEO. N. CARTER,

Commissioner of Reclamation.

10115

Form 35.

Notice for Publication

APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER ~~SENATE~~ HOUSE BILL ~~NO.~~ 21, SESSION LAWS OF 1927.

Notice is hereby given that on the 19th day of May, 19 27, at 10.00 o'clock, A. M., a hearing will be held by the State Commissioner of Reclamation or his Deputy at Boise, County of Ada, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for an extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho No. 10415. The said protests and evidence may be submitted either orally or by affidavits by any persons owning or in possession of a right to the use of any waters of a stream or source of supply effected by the said extension.

1. The number of the said permit 10415.

2. The name and postoffice address of the person or persons or corporation holding the said permit or permits are:

William C. Hazzard, Buhl, Idaho.

3. The amount of water called for by the said permit or permits is 1,000 cubic feet per second from Clear Lakes and its feeders, which is tributary to Snake River.

4. This notice is to be published at the expense of the applicant or applicants above named. The publisher is hereby authorized to deliver to the said applicant the Proof of Publication upon payment for the said publication.

DEPARTMENT OF RECLAMATION.

~~[illegible]~~ GEO. N. CARTER,
Commissioner of Reclamation.

10415

Application for Extensi of Time for Completion of Works Under House Bill 21, Session Laws of 1927.

Notice is hereby given that on the 19th day of May, 1927, at 10:00 o'clock, A. M., a hearing will be held by the State Commissioner of Reclamation or his Deputy at Boise, County of Ada, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for an extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho No. 10415. The said protests and evidence may be submitted either orally or by affidavits by any persons owning or in possession of a right to the use of any waters of a stream or source of supply effected by the said extension.

1. The number of the said permit is 10415.

2. The name and postoffice address of the person or persons or corporation holding the said permit or permits are: William C. Hazzard, Buhl, Idaho.

3. The amount of water called for by the said permit or permits is 1,000 cubic feet per second, from Clear Lakes and its feeders, which is tributary to Snake River.

4. This notice is to be published at the expense of the applicant or applicants above named. The publisher is hereby authorized to deliver to the said applicant the Proof of Publication upon payment for the said publication.

Department of Reclamation.
Geo. N. Carter,
Commissioner of Rec.
lamation. 21-22

reading The Gooding Leader.

Form No. 11-A

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

Date March 28, 1927.

The GoodingLeader,

Gooding, Idaho.

DEAR SIR:

Enclosed you will find notice for publication once a week for four consecutive weeks prior to May 21, 1927, the date set for proof, the expense of the publication to be paid by the applicant, William C. Hazzard, of Buhl, Idaho, to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice and furnish this office with a copy of the first publication.

Very truly yours,

GEO. N. CARTER,

Commissioner of Reclamation.

10415

March 21, 1927

Re: Permit No. 10415
10415

MR. JESS O. EASTMAN
Buhl
I d a h o

Dear Sir:

I am enclosing herewith a copy of Permit No. 10415, made by William C. Hazzard.

This is the last permit filed on Clear Lake. In case this is not the one you desire, advise me.

Hearing on proof of completion of works under this permit will be held at Twin Falls, before the Clerk of the District Court on May 21.

Yours very truly,

Assistant Commissioner
of Reclamation

MS/e
Enclosure

10415

March 15, 1927.

Re: Permit No. 10415.

Mr. William C. Hazzard,
Buhl, Idaho.

Dear Sir:

We are today in receipt of notices for proof of completion of works under the above numbered permit. One copy will be mailed to the Gooding Leader in time for the required five publications prior to May 21, and deposition blanks will be mailed to the district clerk of Twin Falls County in time for proof to be made on the date set.

Very truly yours,

GEO. N. CARTER,
Commissioner of Reclamation,

By

Chief Clerk.

B:P

10415

Form No. 11

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) March 12, 1927

(P. O.) Buhl, Idaho

TO THE COMMISSIONER OF RECLAMATION:

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the The Gooding Leader of Gooding, Idaho, published in the county in which the works are situated.

William C. Hazzard

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer.)

I hereby certify that the facts set forth in the attached notice are true.

W. W. Halliday

Engineer.

10415

FORM 8

Notice for Publication

Notice is hereby given that at 3 P. M., on the 21st day of May 1927, at Twin Falls, County of Twin Falls, State of Idaho, before the Clerk of the District Court of Twin Falls County proof will be submitted of the completion of works for the diversion of 750 cubic feet per second of the waters of Clear Lake and its feeders in Gooding County, Idaho in accordance with the terms and conditions of a certain permit heretofore issued by the then State Engineer of the State of Idaho.

1. The name of the person or corporation holding said permit is William C. Hazzard

2. The postoffice address of such person or principal place of business of such corporation is Buhl, , County of Twin Falls, State of Idaho.

3. The number of such Permit is 10415, and the date set for the completion of such work is May 21, 1927

4. Said water is to be used for Power purposes.

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is 750 cubic feet per second.

6. ~~The amount of lands for which said water is available is acres, particularly described as follows:~~ The place of intended use is N. 81° 00' E. 576' from the SE corner of SW¼ Sec 2, T. 9 S., R. 14 E. B.M.

Geo. N. Carter,
Commissioner of Reclamation.

P.D. No - Lot 7 - Sec. 2 - 9S - 14E
Gooding

10415

FORM 8

Notice for Publication

Notice is hereby given that at 3 P. M., on the 21st day of May 192 7, at Twin Falls, County of Twin Falls, State of Idaho, before the Clerk of the District Court of Twin Falls County proof will be submitted of the completion of works for the diversion of 750 cubic feet per second of the waters of Clear Lake and its feeders in Gooding County, Idaho in accordance with the terms and conditions of a certain permit heretofore issued by the then State Engineer of the State of Idaho.

1. The name of the person or corporation holding said permit is William C. Hazzard

2. The postoffice address of such person or principal place of business of such corporation is Buhl, , County of Twin Falls, State of Idaho.

3. The number of such Permit is 10415, and the date set for the completion of such work is May 21, 1927

4. Said water is to be used for Power purposes.

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is 750

Form No. 7

State of Idaho

DEPARTMENT OF RECLAMATION

BOISE

INSTRUCTIONS

PROOF OF COMPLETION OF WORKS

Mr. William C. Hazzard,
Clear Lake, Idaho.

Boise, Idaho, March 11,1927

DEAR SIR:

I enclose herewith blank form upon which to give notice that you are prepared and desire to submit proof of completion of works under your permit No. 10415.

This form should be filled out and mailed to the Department of Reclamation, at least 60 days before the date upon which proof is to be submitted, which proof MUST be on or before May 21, 1927. Upon receipt of the blank properly filled out, notice for publication will be sent to the paper direct from this office, which notice must be published a period of four weeks prior to the date of proof.

The proof may be submitted at any place convenient to you and two witnesses, where there is a notary public or other officer authorized to administer oaths.

The certificate that shall be issued under this proof does not give you a perpetual right to the use of the water for which application is made, as it only confirms the completion of the works of a capacity to divert and convey to the place of intended use a certain amount of water. The law requires that another proof be submitted when the water has been fully applied to a beneficial use, at which time license is issued for the amount of water actually in use. Information in regard to this last proof will be furnished on request.

Very truly yours,

GEO. N. CARTER,

Commissioner of Reclamation.

10415

MEMORANDUM

PERMIT NO. 10415

RE - EXTENSION OF TIME

Disability begins Dec. 18, 1917 (See Wilkie's Judgment & Decree, Jan.4,1919)
Disability terminates Nov. 1, 1924 (See Order granting extension of time, (dated Sept. 11,1924, and copy of (Remittitur filed Mar. 3,1926)

Time elapsing - 6 years, 10 months, 13 days.

Completion of works originally required July 6, 1919, plus time elapsing equals May 21, 1926.

Application for additional extension of 2 years filed Feb. 18, 1926, Provisions of H.B. 54, Session Laws of 1925.

10415

December 16, 1926

RE: PERMIT NO. 10415

MR. WILLIAM C. HAZZARD
Buhl, Idaho

Dear Sir:

Reference is made to your communication of even date, which reviews to some extent conversation recently had between yourself and the undersigned, relating to the type of construction you propose in connection with the power development contemplated under your Permit No. 10415. Some reference has also been made to the capacity which you should provide in your diversion works, and especially, in the pipe lines which will conduct water to the proposed power house.

For your information I may state that the usual and ordinary policy of this Department, as same has come to my knowledge during the past five years, in regard to strict compliance with the terms of permits and the extent to which diversion capacity is provided up to the limit or the face amount of the permit, is as follows:

Upon making depositions of proof of completion of works, permit-holder may claim a diversion capacity equal to the face amount of the permit, or if it develops that he has not provided such diversion capacity or that there is not as much water available for diversion as originally contemplated, he may make affidavits proving construction of the actual capacity which is provided by such construction. In cases where full completion has not been had; that is to say, where diversion capacity has not been provided equal to the face amount of the permit, then, in compliance with Section 5575, Idaho Compiled Statutes, it becomes the duty of the Department to issue to permit-holder certificate of completion of works for the actual quantity of water which can be diverted and conducted to place of intended use.

10415

MR. WILLIAM C. HAZZARD, December 16, 1926

To make a specific example of this permit: In case you should build only a single pipe line, having a capacity of only 550 cubic feet per second and should otherwise complete the works in a manner satisfactory to the Department, it is my interpretation of the statute that it would become the duty of this Department to issue you certificate of completion of works for the said 550 cubic feet per second of water; thus, allowing the remainder of the stream flow, provided there were such, to revert to the next right in time.

I trust that the foregoing answers your inquiry and makes clear to you the manner in which the permit law ordinarily operates.

Very truly yours,

Commissioner of Reclamation

GNC:E

10415

HARRY C. WYMAN
ATTORNEY AND COUNSELOR AT LAW
306 BOISE CITY NATIONAL BANK BLDG.
TELEPHONE 1391
BOISE, IDAHO

December 16, 1926

Hon. George H. Carter
Commissioner of Reclamation
Boise, Idaho

Dear Mr. Carter:-

Re: Permit No. 10415.

You will doubtless recall the several conversations I have had with you relating to permit No. 10415 for the development of power at Clear Lakes, Gooding County, Idaho as to the necessity of building the works of sufficient size and character for 1,000 cubic feet of water per second with two pipe lines of ninety inch diameter of steel and wood stave construction as shown by the permit and map filed therewith in your office; as it now appears that there is only 550 cu. ft. per sec. according to government reports and that of engineers.

This question has been asked me, and I understood you to say that it is not necessary under these circumstances to build works of sufficient capacity to carry 1,000 cu. ft. per second of water with a double pipe line as indicated, but that if instead one continuous riveted or welded steel pipe or wooden stave pipe 90" in diameter which is sufficient to carry the 550 cu. ft. per sec. of water and corresponding other works sufficient to utilize the same were constructed in time, that it would be a compliance with the rules of your office so that I could obtain the usual certificate of completion of works for the 550 cu. ft. per sec. of water made available.

As my time for completion of works is growing very short I would appreciate it very much if I might have an immediate reply confirming this.

Yours very truly,

William C. Hazzard

10415

HAWLEY & HAWLEY
ATTORNEYS AND COUNSELORS

JAMES H. HAWLEY
JESS B. HAWLEY
O. W. WORTHWINE
SAM S. GRIFFIN
JAMES H. HAWLEY, JR.

OVERLAND BUILDING

BOISE, IDAHO

November 30-1926.

State Commissioner of Reclamation,
Boise, Idaho.

Attention Mr. Carter.

Dear Mr. Carter:

We understand that there will be an attempt to modify the terms of permit held by W. C. Hazzard, No. 10415 to appropriate certain waters of Clear Lake, and Clear Lake' Creek.

We have several times, called your attention to the fact that we represent Mrs. Syster who holds subsequent permits.

We think that it is our right to be present at any hearings which may take place on change or alteration of the permits. Mrs. Syster is in a position to develop under her permits and intends to do so as soon as the existing prior permit expires. In view of this fact, we are especially insistent that no ex-parte hearings be had which might have the effect of prejudicing Mrs. Syster's rights.

Respectfully yours,

Hawley Hawley

JBH:dc

10415

For 34

Permit No. 10415

EXTENSION OF TIME FOR COMPLETION OF WORK UNDER HOUSE BILL 54, SESSION LAWS OF 1925.

STATE OF IDAHO, } ss.
County of Twin Falls }

William C. Hazzard of ~~Gooding County~~ Buhl, State of Idaho,
being first duly sworn upon his oath, deposes and says:

THAT he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho, No. 10415 ;

and extensions of time under the Syster-Hazzard litigation

THAT under the terms and conditions of said Permit, Completion of Works thereunder is required by May 21st, 19 26 :

THAT he has heretofore in good faith performed the following work and taken the following steps to bring about the completion of the said works described under the said Permit, to-wit: Has performed ~~h~~ about one-half the work required to complete the works of diversion ~~as required by the specifications of said permit at a cost of approx-~~ imately twenty five thousand dollars.

THAT he is unable to complete the remainder of the said works and submit Proof of Completion of Work within the required time for the following reasons, to-wit:

1. Owing to the financial depression existing since the termination of the suit of Syster v. Hazzard et al, upon which extensions of time to complete works of diversion were based, applicant has been unable to procure funds with which to complete works.

2. That the City of Twin Falls, Idaho, is desirous of submitting to its electors a proposal to purchase said site and water rights under said permit 10415, with the view of constructing a power plant to furnish electricity to its inhabitants, but in order to justify the purchase of said site and construct said plant it will be necessary to have an extension oftime for two years from May 21, 1926 to enable said city to procure legislation from the legislature of 1927, and said city has procured an option to purchase said site and permit, which expires July 1st, 1927, with the expectation of submitting said proposal of purchase to its voters as soon as said proposed legislation is procured.

3. If said City is to purchase said site and permit it will be advisable for it to make certain engineering and construction changes to enlarge and more fully utilize the water appropriated under said permit and must therefore have such extension of time to make such changes.

10415

For. 34

Permit No. 10415

EXTENSION OF TIME FOR COMPLETION OF WORK UNDER HOUSE BILL 54, SESSION LAWS OF 1925.

STATE OF IDAHO, }
County of ..... } ss.

..... being first duly sworn on oath deposes and says:

THAT he is the owner and ..... of Permit to Appropriate the Public Waters of the State of Idaho, No. 10415

THAT under the ..... completion of Works thereunder must be ..... May 21st, 1926.

THAT he has ..... bring about the ..... about .....

THAT he ..... Work within the ..... Proof of Completion of .....

.....

.....

.....

WHEREFORE he makes application to the Commissioner of Reclamation to extend the time for Completion of Works under the said Permit to May 21st, 1928, pursuant to the provisions of House Bill 54, Session Laws of 1925.

William C. Hazzard
Applicant.

Subscribed and sworn to before me this 17th day of February, 1926.

George Perriott
Notary Public.

My commission expires February 17, 1928, 19 ....

Date of receipt at the office of the Department of Reclamation, February 19, 1926.

APPROVAL OF COMMISSIONER OF RECLAMATION

WHEREAS, Application for an extension of time for completion of Works under Permit No. 10415, has been made by the owner thereof, which application was duly advertised in the

Gooding Leader of Gooding, Idaho, for a period of two consecutive weeks, and

WHEREAS, a hearing in regard to the said Application was then duly held at Reclamation Dept., Reclamation, Boise, Idaho, on March 22, 1926, as specified in the said advertisement above referred to, and;

WHEREAS, after taking into consideration all evidence and testimony introduced at the said hearing it appears that the owner of the said Permit is entitled to a further extension of time within which to complete work,

NOW, THEREFORE, I, W. G. Swendsen, Commissioner of Reclamation of the State of Idaho, by virtue of the authority vested in me under House Bill 54, Session Laws of 1925, hereby extend the Time for Completion of Works under Permit to Appropriate the Public Waters of the State of Idaho, No. 10415,

to May 21, 1927.

WITNESS my hand this 13th day of May, 1926.

W. G. Swendsen
Commissioner of Reclamation.

10415

HOUSE BILL 54

SESSION LAWS OF 1925

GRANTING AUTHORITY TO THE COMMISSIONER OF RECLAMATION TO EXTEND THE TIME WITHIN WHICH THE WORK OR WORKS UNDER THE PROVISIONS OF A PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO SHALL BE COMPLETED, AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That in addition to the duties and authority prescribed by Section 5570, Compiled Statutesof Idaho, the Commissioner of Reclamation may, upon receipt of an application in such form and setting up such facts as he may designate, requesting an extension of time within which to make proof of completion of works under any permit upon which proof of completion of works is, or may be, required on or before January 20, 1927, extend the time within which such permit holder shall be required to make proof of completion of works upon the said permit or permits, so that the additional time granted shall in no case exceed two years, provided the owner of such permit shall have furnished satisfactory evidence of his good faith, together with a satisfactory showing as to the necessity for such extension of time. *Provided, however,* That upon receipt of such application, and before final action is taken thereon, it shall be the duty of the Commissioner of Reclamation to hold a public hearing at which any and all persons owning or in possession of a right to the use of any waters of a stream or source of supply affected by the said extension, may have an opportunity to be heard, either orally or by affidavits, and *Provided, further,* That it shall be the duty of the Commissioner of Reclamation to cause a notice of such hearing to be published at the expense of the applicant, in a newspaper of general circulation in the county in which the works contemplated by said permit are located, for at least two consecutive issues setting forth the number of the permit, the name of its owner or owners, the amount of water called for in said permit, the source of supply and the time and place when and where such hearing is to be held, *Provided, also,* that no extension shall be granted under the provisions of this act, unless the application for extension herein referred to shall have been filed in the office of the Department of Reclamation at least twenty days in advance of the date when such proof of completion is due.

SEC. 2. Extension of time for completion of works granted under this act shall automatically extend the time for making proof of application of water to beneficial use.

SEC. 3. Since this act is to provide for the present emergency, it shall remain in force and effect only until January 20, 1927.

SEC. 4. An emergency existing therefor, this act shall take effect and be in force from and after its passage and approval.

Approved February 13, 1925.

REGULATIONS

1. An application for Extension of Time for Completion of Works filed pursuant to the terms of House Bill 54, Session Laws of 1925, must be made on the form prescribed by the Department of Relcamation.

2. The names and addresses of all owners of the permit for which an extension of time is requested must be set forth in the application.

3. The hearing provided for by the said House Bill may be held either at some point in the vicinity of the works contemplated under the Permit in question or at the office of the Department of Reclamation at the discretion of the Commissioner of Reclamation.

4. Upon receipt of an Application for Extension duly executed the Commissioner of Reclamation will designate the time and place at which the said hearing will be held and also designate the newspaper in which the said notice of hearing is to be published for two consecutive issues. A formal notice for publication will be forwarded to the said newspaper. The applicant will be required to pay the cost of publication and transmit or cause to be transmitted a duly executed Proof of Publication to the Department of Reclamation prior to the date set for the hearing.

5. The hearing will be conducted in such manner as deemed advisable by the Commissioner of Reclamation or his Deputy.

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

IN THE MATTER OF APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER PERMIT NO. 10415 TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO	ORDER GRANTING EXTENSION OF TIME

WHEREAS, Under date of February 19, 1926, William C. Hazzard, the owner of Permit No. 10415 to appropriate the public waters of the State of Idaho, filed an application in the office of the undersigned, Commissioner of Reclamation, requesting an extension of time within which to submit proof of completion of works under the said permit, which said application is requested under the provisions of Chapter 28 of the Session Laws of Idaho for 1925; and

WHEREAS, A public hearing on the said application was convened, all as required by law, and an investigation was made by the undersigned, Commissioner of Reclamation, for the purpose of determining whether or not the said extension should be granted; and

WHEREAS, A consideration of all of the information adduced at the hearing, together with the records of the Department of Reclamation relating to the said permit and such other facts as are available to the undersigned, Commissioner of Reclamation, it appears that a necessity exists for an extension of time under the said permit; that the applicant has acted in good faith, and that an extension of time should, therefore, be granted for a period of one year; and

WHEREAS, Proof of completion of works under the said permit is due and must be made on or before May 21, 1926;

NOW, THEREFORE, IT IS HEREBY ORDERED, That the extension of time requested in the said application, be, and the same is, hereby granted for one year only, and it is further ordered that a certificate evidencing such extension be issued to the permit holder, extending the time within which permit holder shall be required to make proof of completion of works under the said permit to May 21, 1927.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office, this 13th day of May, 1926.

W. G. Swendsen

Commissioner of Reclamation

10415

May 14, 1926.

In re: Permit No. 10415-Wm. G. Hassard.

Mr. Jess B. Hawley,
Attorney for Protestant.
Boise, Idaho.

Dear Sir:-

Enclosing herewith copy of Order granting extension of time of one year for completion of works under the above numbered permit.

Very truly yours,
W. G. SWENDSEN,
Commissioner of Reclamation.

By _____
Chief Clerk.

Enc. Order

10415

May 14, 1926.

Re: Permit No. 10415-Wm. C. Hazzard.

Mr. George Herriott,
Attorney for Wm. C. Hazzard,
Twin Falls, Idaho.

Dear Sir:-

Enclosed you will find Order granting extension of time of one year for completion of works under the above numbered permit.

Very truly yours,
W. G. SWENDSEN,
Commissioner of Reclamation.

By_____
Chief Clerk.

Enc. Order

10415

May 14, 1926.

Re: Permit No. 10415-Wm. C. Hazzard.

Messrs. Wyman & Wyman,
Attorneys at law,
Boise, Idaho.

Gentlemen:-

Per your request, we enclose herewith copy of the Order granting extension of time of one year for completion of works under the above numbered permit.

Very truly yours,
W. G. SWENDSEN,
Commissioner of Reclamation.

By_____
Chief Clerk.

Enc. Order

10415

RECEIPT F[illegible] REGISTERED ARTICLE NO. 14221

[illegible] fee paid. [illegible] class postage paid. (Date.) 192

From Mint Reclamation

Addressed to Geo. Heinrich Twin Falls Idaho

Accepting employee will place initials in space below, indicating restricted delivery.

Return receipt fee [illegible] Special delivery fee

Delivery restricted to addressee { in person / or order } 10415 Postmaster, per

MAY 14 1926 POSTMARK REGISTERED

RECEIPT FOR REGISTERED ARTICLE NO. 14220

[illegible] fee paid. [illegible] class postage paid. (Date.)

From Mint Reclamation

Addressed to Jesse B. Stanley Boise Idaho

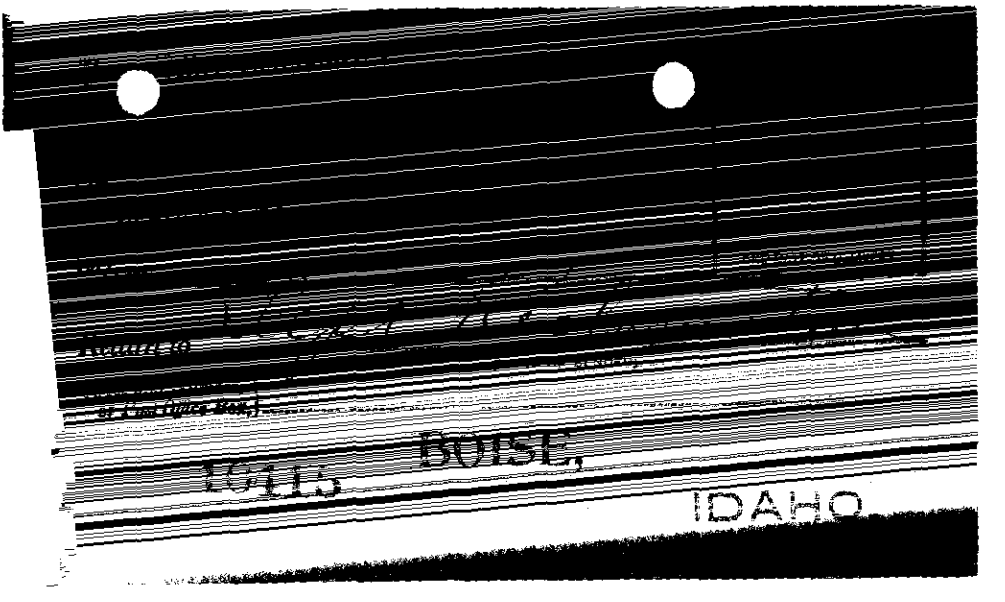
Accepting employee will place initials in space below, indicating restricted delivery.

Return receipt fee [illegible] Special delivery fee

Delivery restricted to addressee { in person / or order } 10415 Postmaster, per

MAY 14 1926 POSTMARK REGISTERED

c5—6869


BOISE,
IDAHO

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

George Arnott

(Signature or name of addressee.)

(Signature of addressee's agent.)

Date of delivery, ..., *192*

FORM 3811

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

(Signature or name of addressee.)

(Signature of addressee's agent.)

Date of deli ....., *192*

Form 3811

10415

April 1, 1926.

Re: Permit No. 10415.

Mr. George Herriott,
Attorney at law,
Twin Falls, Idaho.

Dear Sir:-

Your letter of the 29th ult., enclosing affidavit of publication for extension of time under the above permit, received today. These will be placed on file with the other papers in this case.

Very truly yours,
W. G. SWENDSEN,
Commissioner of Reclamation.

By_____
Chief Clerk.

10415

GEORGE HERRIOTT
ATTORNEY AT LAW
TWIN FALLS, IDAHO

March 29, 1926.

Hon. Commissioner of Reclamation,
Boise, Idaho.

Dear Sir:

In compliance with my promise at the hearing for extension under permit 10415 at Boise, March 22nd, I hand you herewith the affidavit of publication of notice of said hearing published by the Gooding Leader on March 11the and 18th, 1926.

Kindly acknowledge receipt of the same, and oblige,

Yours very truly,

George Herriott

10415

PUBLISHER'S AFFIDAVIT

COUNTY OF GOODING, }
STATE OF IDAHO } ss.

F. F. Swan, being first duly sworn, deposes and says that he is Publisher of The Gooding Leader, a newspaper of general circulation in Gooding County, Idaho, published weekly in the City of Gooding, in said County and State; that said newspaper has been published in said county uninterruptedly and continuously for more than seventy-eight consecutive weeks prior to the first publication of the attached notice; that a notice, of which the annexed is a true copy, was published in the said newspaper for at least Two consecutive issues, commencing with the issue dated Mar. 11- 1926 and ending with the issue dated Mar. 18, 1926 in the regular and entire issue of said newspaper and not in any supplement thereof.

F. F. Swan

Affiant's Signature.

Subscribed and sworn to before me this 20th day of Mar. 1926

P. T. Lutpton

Notary Public.
Residing at Gooding, Idaho.

NOTICE FOR PUBLICATION

Application for extension of time for completion of works under House Bill 94 Session Laws of 1925.

Notice is hereby given that on the 23nd day of March 1926, at 10 o'clock, a. m., a hearing will be held by the State Commissioner of Reclamation or his deputy at Boise, County of Ada, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for an extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho No. 10415. The said protests and evidence may be submitted either orally or by affidavits by any persons owning or in possession of a right to the use of any waters of a stream or source of supply affected by the said extension.

1. The number of said permit is 10415.

2. The name and postoffice address of the person or persons or corporation holding the said permit or permits are:

William O. Hazzard, Buhl, Idaho.

3. The amount of water called for by the said permit or permits is 1000 cubic feet per second from Clear Lake and feeders, which are tributary to Snake River.

4. This notice is to be published at the expense of the applicant or applicants above named. The publisher is hereby authorized to deliver to the said applicant the Proof of Publication upon payment for the said publication.

Department of Reclamation,
W. G. SWENDSEN,
13-14 Commissioner of Reclamation.

10415

Form 35.

Notice for Publication

APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER ~~SENATE BILL 232, SESSION LAWS OF 1921~~ HOUSE BILL 54, SESSION LAWS OF 1925

Notice is hereby given that on the 22nd day of March, 19 26, at 10 o'clock, A. M., a hearing will be held by the State Commissioner of Reclamation or his Deputy at Boise, County of Ada, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for an extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho No. 10415. The said protests and evidence may be submitted either orally or by affidavits by any persons owning or in possession of a right to the use of any waters of a stream or source of supply effected by the said extension.

1. The number of the said permit is 10415.

2. The name and postoffice address of the person or persons or corporation holding the said permit or permits are:

William O. Hazzard, Buhl, Idaho

3. The amount of water called for by the said permit or permits is 1,000 cubic feet per second from Clear Lake and feeders, which are tributary to Snake River.

4. This notice is to be published at the expense of the applicant or applicants above named. The publisher is hereby authorized to deliver to the said applicant the Proof of Publication upon payment for the said publication.

DEPARTMENT OF RECLAMATION.
W. G. Swendsen,
Commissioner of Reclamation.

10115

IN THE STATE OF IDAHO

DEPARTMENT OF RECLAMATION.

In the Matter of Extension of Time for completion of work under House Bill No. 54, Session Laws of 1925, of Permit No. 10,415.	)	OBJECTIONS TO GRANTING OF EXTENSION.

COMES NOW Mary E. Syster and objects to the granting of the extension petitioned by William C. Hazzard on the 17th day of February, 1926, covering permit No. 10,415, issued by the former State Engineer of the State of Idaho, and for objection against the extension of said permit does set forth:

I.

That this affiant and objector is the owner and holder of permits No. 13,362 and No. 13,363, both covering diversion of the waters covered by permit No. 10,415. That said two permits are legally existing permits, but subsequent to said permit No. 10,415.

II.

That if the extension of time is granted as prayed for by Mr. Hazzard it will result in destruction of the rights of priority heretofore given and vested in the said applicant by the State of Idaho, under the said permits No. 13,362 and No. 13,363.

10415

1-bw

22 Mar 26

III.

That the said William C. Hazzard has had ample opportunity to construct the works for diversion of water, as provided under the terms of said permit No. 10,415, and an extension of time would be an injury and detriment to the permit and rights of this affiant.

IV.

That to extend said permit would violate the Constitutional rights of this affiant, particularly being a violation of Section 3 of Article 15 of the Constitution of the State of Idaho, which provides that

> "the right to divert and appropriate the unappropriated water of any national stream to beneficial uses shall never be denied * * * * ."

That the effect of an extension would be to deny the right of this affiant to divert and appropriate the unappropriated water of Clear Lake and Clear Creek.

V.

That said extension would be a violation and denial of the rights of this affiant under Section 1 of Article I of the Constitution of the State of Idaho in that it would deny the free, equal and inalienable right of this affiant to acquire, possess and protect her property rights in said permits No. 13,362 and No. 13,363.

VI.

That said extension would be a denial and violation of the Constitutional rights of this affiant under Section 13 of Article I in that she would be thereby deprived of her property without due process of law.

VII.

That said extension would also be a violation and a denial of the rights of affiant under Section 14 of Article I of the

Constitution of the State of Idaho in that her property would be taken for public use without just compensation paid therefor.

VIII.

That said extension would also be a denial and violation of the rights of this affiant under the 14th Amendment to the Constitution of the United States in that the State of Idaho would thereby deprive this affiant of her property without due process of law and deny to her equal protection of the laws.

These objections should be taken to be an affidavit by this affiant.

Further affiant sayeth not.

Mary E Dyste

Subscribed and sworn to before me this 22 day of March, 1926.

[signature]

March 10, 1926.

Re: Permit No. 10415-Wm. C. Hazzard.

Mr. George Herriott,
Attorney at law,
Twin Falls, Idaho.

Dear Sir:-

Enclosed you will find order granting extension of time for completion of works under the above numbered permit under the provisions of Section 5570, Idaho Compiled Statutes. Notice of a further extension of two years is now being published in the Gooding Leader, the date for hearing being March 22nd, at this office, at 10 o'clock a.m.

Very truly yours,
W. G. SWENDSEN,
Commissioner of Reclamation.

By_____
Chief Clerk.

Encl.

10415

March 10, 1926.

Re: Permit No. 10415-Wm. C. Hazzard.

Mr. Jess B. Hawley,
Attorney at law,
Boise, Idaho.

Dear Sir:-

Per your request, you will find enclosed copy of the order granting extension of time under the above numbered permit under the provisions of Section 5570, Idaho Compiled Statutes.

Very truly yours,
W. G. SWENDSEN,
Commissioner of Reclamation.

By_____
Chief Clerk.

Encl.

10415

March 9, 1926.

Re: Permit No. 10415-Wm. C. Hazzard.

Mr. Jess B. Hawley,
Attorney at law,
Boise, Idaho.

Dear Mr. Hawley:-

Referring to your letter of the 8th inst. would say that the application for extension of time under the above numbered permit was filed in this office on the eighteenth day of February, 1926. This application was filed under the provisions of House Bill 54, Session Laws of 1925, allowing for a two years extension. Under this law, notice of the extension is required to be published two consecutive weeks prior to the date set for the hearing. The notice was sent to the Gooding Leader March 4th and March 22nd, 1926, set for the date of hearing, at this office, at 10 o'clock a.m.

The enclosed copy of a little memorandum filed with this permit will give you the dates from which the extension has run.

Very truly yours,
W. G. SWENDSEN,
Commissioner of Reclamation.

By_____
Chief Clerk.

Enc.

10415

HAWLEY & HAWLEY
ATTORNEYS AND COUNSELORS

JAMES H. HAWLEY
JESS B. HAWLEY
O. W. WORTHWINE
SAM S. GRIFFIN
JAMES H. HAWLEY, JR.

OVERLAND BUILDING

BOISE, IDAHO

March 8, 1926

Hon. Warren G. Swendsen,
Commissioner of Reclamation,
State House,
Boise, Idaho

Dear Mr. Swendsen:

For the past six months I have at intervals taken the precaution of writing to your office asking that at any time any papers were filed in connection with permit No. 10415 that I would be notified. I assumed that I would be entitled, both as a matter of courtesy and right, to this information. I was rather surprised to find, by accident, that on February 28, 1926 Mr. Hazzard had filed an application for extension. Now will you be so kind as to inform me whether there is any time set for the hearing. I certainly will contest this extension and if one has been granted I will also move in court to set it aside.

Yours very truly,

JBH.bw

10415

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

DATE March 4, 1926

The Gooding Leader,
Gooding, Idaho.

DEAR SIR:

Enclosed you will find notice for publication once a week for ~~four~~ two consecutive weeks prior to March 22nd, 1926, the date set for ~~proof~~ hearing, the expense of the publication to be paid by the applicant, William C. Hazzard, of Buhl, Idaho, to whom you should furnish proof of publication on or prior to the date set for ~~proof~~ hearing.

Please acknowledge receipt of the notice and furnish this office with a copy of the first publication.

Very truly yours,

W. G. SWENDSEN,

Commissioner of Reclamation.

10415

Mary E. Syster, Appellant,	)	
vs.	)	No. 3724.
William C. Hazzard, Mutual Light, Heat & Power Co., E. J. Finch, Trustee, Louise Hazzard, and Farmers' Mutual Power Co., a corporation,	)	Case No. 1496
Respondents.	)	

This cause having been heretofore heard, submitted and taken under advisement by the court and the court having fully considered, the same, now on this day the cause was again called and the decision of the court by District Judge T. Bailey Lee is delivered, to the effect that the judgment of the lower court be modified and affirmed.

It is therefore considered, adjudged and decreed by the court that the judgment of the district court of the fourth judicial district in and for the county of Gooding in the above entitled cause be and the same hereby is affirmed except as to Permit No. 7056 which has been abandoned, and the trial court is directed to modify the decree accordingly. Costs are awarded to respondents in the sum of $40.

I, I. W. Hart, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the preceding and annexed contains a true and correct copy of the original judgment entered in the above entitled cause, on the 29th day of May, 1924, and now on file in my office.

WITNESS my hand and the seal of the Court this 2d day of June, 1924.

(SUPREME COURT SEAL)

I. W. Hart, Clerk,
By - - - - Deputy Clerk

Filed November 1, 1924, Myrtle P. Enking, Clerk,
By Carrie Painter, Deputy

10415 Rec'd Nov 3, 1926

STATE OF IDAHO :
) ss
County of Gooding :

I, MYRTLE P. ENKING, Clerk of the District Court and Ex-Officio Auditor and Recorder in and for the County of Gooding, State of Idaho, do hereby certify that the annexed is a full, true and correct copy of the original Remittitur in Gooding County Case No. 1496, Mary E. Syster, Appellant, vs. William C. Hazzard, et al, Respondents, now on file in my office as the same appears on the records of said Gooding County, State of Idaho.

IN TESTIMONY WHEREOF I have set my hand and affixed my official seal this 7th day of November, A. D. 1924.

Myrtle P. Enking

Clerk, Ex-Officio Auditor & Recorder
Gooding County, Idaho

10115

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Boise.

In the Matter of Extension of Time Under Permit No. 10415, Under the Provisions of Section 5570, Idaho Compiled Statutes	)	ORDER GRANTING EXTENSION

WHEREAS, Under date of March 31, 1919, certificate of approval was granted under the terms and provisions of Permit No. 10415, which certificate of approval in fact extended the time during which the terms and provisions of Permit No. 10415 might be complied with, until such time as the pendency of a matter within the jurisdiction of the District Court of the Fourth Judicial District of the State of Idaho might be removed; and,

WHEREAS, Under date of June 12, 1924, William C. Hazzard, the holder of said permit, advised the Department of Reclamation that such disability was removed by reason of the fact that the Supreme Court had filed its opinion in this case, thereby removing said pendency of action; and,

WHEREAS, Such notification by permit holder was filed in the Department of Reclamation prior to the period of time allowed for the Supreme Court considering petition for rehearing; and,

WHEREAS, Subsequent to this date, and on June 20, 1924, a petition for rehearing of the above mentioned case was filed with the said Court; and,

WHEREAS, Under date of July 31, 1924, the Supreme Court ordered respondents to file an answer to said petition, which answer was filed August 19, 1924; and,

WHEREAS, On September 11, 1924, the Commissioner of Reclamation of the State of Idaho issued an order whereby the aforesaid notification of Permit holder was set aside, made void and held for naught, for the reason that the previous disability was again in effect, and that said disability clause be declared still in effect, as of date of June 12, 1924, and that permit holder be not required to file notification of final removal of said disability until such time as remittitur of the Supreme Court finally went down to the trial court in said case; and,

WHEREAS, On March 3, 1926, a copy of such Remittitur was filed in the Department of Reclamation of the State of Idaho, showing that the original Remittitur in such case was filed in the District Court of the County of Gooding, State of Idaho, on November 1, 1924;

10415

3 / 13 26

NOW, THEREFORE, In view of the contents of the petition of the holder of said permit No. 10415 for extension of time, under the provisions of Section 5570, Idaho Compiled Statutes, and the foregoing outline of conditions, IT IS HEREBY ORDERED that the time within which to complete works under said permit be, and the same is hereby extended so that the time lost by such delays shall be added to the time given in the original permit for each and every act required, as follows:

That the time for completion of one-fifth of the work under said permit shall be extended to November 21, 1925;

That the time for completion of the works under said permit shall be extended to May 21, 1926:

That the time for beneficial use of water under said permit shall be extended to May 21, 1952.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office, at Boise, Idaho, this 3rd day of March, 1926.

Commissioner of Reclamation.

10415

BEFORE THE DEPARTMENT OF RECLAMATION OF THE STATE OF IDAHO.

In the Matter of Permit

No. 10415, Issued to
and Owned by William C. Hazzard.

Brief of William C. Hazzard, applicant for an extension of time for the completion of works under said permit No. 10415, under house bill No. 54, Session Laws 1925, page 40, setting forth the record granting extensions of time under said permit for the purpose of determining the time when such works should be completed under the present extensions.

Hon. Commissioner of Reclamation,
Boise, Idaho.

Dear Sir:

At the time of a recent visit to your office for the purpose of examining the record in your office with reference to the exact time at which the works of diversion should be completed under permit 10415, under the present extensions, your office was unable to find in the files of 10415 the complete record of all matters appertaining to this permit. It has occurred to the applicant since he returned home that some parts of this record may be filed under permit 7056. These permits Nos. 7056 and 10415, were handled together very largely up to the time the decisoj of the Supreme Court was rendered in the case of Syster v. Hazzard, 39 Idaho, 580, in which it was decided that permit 7056 had been abandoned. Applicant remembers that on one occasion when examining the record in your office, a part of such record was found in 7056, hence this suggestion. We are calling attention to these matters to aid your office as far as we can, and we are setting forth the following record from our files so as to point out the specific matters upon which we rely to prove that our time expires under the present extensions on May 21, 1926.

Under permit No. 10415, the permit holder had five years within which to complete the works of diversion, to-wit, up to July 8, 1919, and had one-half that time, to-wit, until January 8, 1917, within which to do one-fifth of said work. That the Supreme Court of Idaho held in its opinion that the permit holder had done one-fifth of said work within the time allowed, hence he had two and one-half years from January 8, 1917, within which to complete the said work, provided there was no interference

That on December 18th, 1917, Mary E. Syster filed in the office of the State Engineer her contest petition, praying for the cancellation of said permit. Under registered letter (P. O. registry number 7091) from the State Engineer, J. H. Smith, under date of January 7th, 1918, to the said William C. Hazzard, he was notified of the filing of said petition.

That thereafter, and on February 26th, 1918, another or amended petition was filed in said office by the said Mary

Rec'd May 3, 1926 10415

E. Syster, asking for the cancellation of said permit, of which the said Hazzard was duly notified.

That thereafter, and on the 26th day of May, 1918, the said Hazzard filed in the office of the State Engineer his application for an extension of time for the completion of said works, on account of the interference by the said Mary E. Syster.

That thereafter, and on the 4th day of January, 1919, the then State Engineer, Fred A. Wilkie, rendered his Judgment and Decree in said contest and refused to grant the prayer of said petiton and refused to cancel said permit, and in the last paragraph of said Judgment and Decree he granted an extension of time within which to complete said works on account of said interference of said Mary E. Syster, such extension of time to start upon the 18th day of December, 1917, the words of which are as follows:

"IT IS FURTHER ORDERED that the time for the completion of said works is hereby extended in accordance witth the application therefor filed by the contestee in the office of the State Engineer of the State of Idaho on the 26th day of May, 1918, from the time of the filing of the contest petition by the contestant in this proceeding, to-wit: The 18th day of December, 1917, up to and during the time for appeal from this decision and decree and if appeal is taken such extension is continued during the period of such litigation and until the same is finally terminated."

That instead of the contestant, Mary E. Syster, taking an appeal from the Judgment and Decree of the State Engineer, she filed an action de novo in the District Court of the Fourth Judicial District for Gooding County on March 21, 1919.

Owing to the fact that Engineer Wilkie's extension of time above quoted provided that the extension should continue during the "time for appeal from this decision", and, if appeal is taken such extension to "continue during the period of such litigation", and the further fact that an "appeal" was not taken but a new action brought, it occurred to the permit holder that a technical error might be raised against the order of Engineer Wilkie. For that reason the permit holder made another application for a further order of extension. The order of Engineer Wilkie of January 4th, 1919, edfinitely extended the time for the period of appeal from his decision, which would be ninety days from January 4th, 1919, or April 4th, 1919. Hence the order of Engineer Swendsen of March 31, 1919, extending the time until the disability shall have been removed, took effect before the expiration of the ninety day period of appeal from the Wilkie extension. Therefore, whether there was a technical defect in the Wilkie order because of the use of the word "appeal" in the clause "and if appeal is taken" or not, there was no lapse between the taking effect of the order of Engineer Swendsen and the expiration of the Wilkie order.

The order of extension of Engineer Swendsen of March 31, 1919, profided that the permit holder should notify the State Engineer's office of the removal of the disability, within thirty days from such removal. Accordingly the permit holder did by letter dated June 7, 1924, and filed in the office of the Department of Reclamation on June 12, 1924, notify the Reclamation Department that the Supreme Court had decided the case of Syster v. Hazzard on June 2, 1924, and that the disability was removed, "unless the appellant Syster takes further steps in the case, either by moving for a rehearing or by appeal to the Supreme Court" (Meaning the Supreme Court of the United States) and that

"if further action is taken by appellant which will continue to interfere, as above mentioned, the undersigned will make an additional application to the department for further extension".

Therefore, by letter to the Department of Reclamation by the permit holder, dated September 8, 1924, the permit holder notified the said department that a motion had been made by the appellant, Syster, for a rehearing in the Supreme Court and asked that an order continuing the extension be made until the case was finally determined. Upon such application the Commissioner of Reclamation made an order, dated September 11th, 1924, that the time be extended for completion "until such time as the remittitur of the Supreme Court finally goes down to the trial court in said case".

That thereafter the motion of appellant Syster for a rehearin of said case in said Supreme Court was denied and a remittitur was sent down to the trial court, to-wit, the District Court of the Fourth Judicial District for Gooding County, and filed in the Clerk's office of said court on November 1, 1924, as will appear by a certified copy of said remittitur, certified to by the Clerk of said District Court, which accompanies this brief.

From the foregoing it therefore appear that the only time running against the two and a half year period for completion of works is the time from January 8, 1917, to December 18, 1917, which is 11 months and 10 days. Deducting 11 months and 10 days from two and one-half years, leaves 1 year 6 months and 20 days, which time added to November 1st, 1924, places the time for completion of said works under the extensions granted, as May 21, 1926.

Respectfully submitted,

George Herriott

Attorney for permit holder.

GEORGE HERRIOTT
ATTORNEY AT LAW
TWIN FALLS, IDAHO

March 1, 1926.

Hon. W. G. Swendsen,
Commissioner of Reclamation,
Boise, Idaho.

Dear Sir:

In compliance with the request in your letter of February 19th, I hand you herewith a certified copy of the remittitur of the Supreme Court in the case of Syster v. Hazzard, in which it is shown that it was filed in the Clerk's Office of the District Court of the Fourth Judicial District for Gooding County, on November 1st, 1924. Upon going through our files we found that we had a certified copy of this remittitur which was certified shortly after the same was filed. We did not know until this time that we had the same or we could have filed it with out application for extension of time to complete works under permit 10415, under Session Laws 1925, page 40.

We have gone over our records and pointed out the several orders for extensions heretofore granted and give you the data upon which we contend that our time, under former extensions, expires on May 21st, 1926.

Very truly yours,
George Herriott
Attorney for permit holder.

10415

GEORGE HERRIOTT
ATTORNEY AT LAW
TWIN FALLS, IDAHO

Feb 23, 1926.

Hon. W. G. Swendsen,
Commissioner of Reclamation,
Boise, Idaho.

Dear Sir:

I have your letter of the 19th inst. with reference to application of W. C. Hazzard for extension of time upon permit 10415, and note what you say with reference to filing with the application a certified copy of the remittitur in the case of ~~Sixtxr~~ Syster v. Hazzard decided by the supreme court.

We were in a hurry to file the application and didnot wait to get a copy of the remittitur to file with the application. However we will forward the copy in a short time- as soon as we can get the same from Gooding County.

Very truly yours,

George Herriott

10115

February 19, 1925

Re: Permit No. 10415

MR. GEORGE HERRIOTT
Attorney at Law
Twin Falls, Idaho

Dear Sir:

This will acknowledge receipt of your communication of February 17, enclosing application for extension of time for completion of works under House Bill No. 54, Laws of 1925, for the benefit of Permit 10415.

I am advised by Mr. Swendsen that the understanding had while the matter was discussed with him, was that the court's decree would be filed here, in order that basis might be had for computation of the period of disability incurred by reason of litigation.

Therefore, you should file a properly authenticated copy of the court's decree in this office. Upon receipt of same, further consideration will be given the matter of application for extension of time under House Bill No. 54.

Very truly yours,

Assistant Commissioner
of Reclamation

CHC:E
CC: Harry C. Wyman

10415

GEORGE HERRIOTT
ATTORNEY AT LAW
TWIN FALLS, IDAHO

February 17, 1926.

Hon. W. G. Swendsen,
Commissioner od Reclamation,
Boise, Idaho.

Dear Sir:

On behalf of Mr. William C. Hazzard, I hand you herewith an application by him for an extension of time to complete the works of diversion under permit 10415 for a period of two years from and after May 21, 1926, as provided under the terms of housebill 54, Session Laws of 1925, to be filed in your office.

I cannot determine from the statute or from your regulations as to what, if any, fees are required upon the filing of this application. If there are any, please advise me and I will promtpy remit.

The matter of publication of notice of hearing can probably be fixed later and at a time to suit the convenience of your office and the applicant. If proper, the applicant makes the request that the hearing upon this matter be had before you, personally.

Very truly yours,

George Herriott

10415

October 13, 1925

Re: Permit 10415

Messrs. Hawley & Hawley
Attorneys at Law
Boise, Idaho

Gentlemen:

No further showing has been made in the matter of extension of time for completion of works under the terms and provisions of Mrs. Syster's permit No. 10415, since the original application was filed sometime ago.

You will be notified if there are any further developments in the case.

Very truly yours,

Assistant Commissioner
of Reclamation

GMC:E

10415

10415

HA LEY & HAWLEY
ATTORNEYS AND COUNSELORS

JAMES H. HAWLEY
JESS B. HAWLEY
O. W. WORTHWINE
SAM S. GRIFFIN
JAMES H. HAWLEY, JR.

OVERLAND BUILDING
BOISE, IDAHO

October 12-1925

Commissioner of Reclamation,
Capitol Building,
Boise, Idaho

Attention: Mr. Swendsen

My dear Mr. Swendsen:

Sometime ago on behalf of Mary E. Syster we asked that anything filed in your office in connection with Permit No. 7056 or Permit No.10415 , should be called to our attention, as we are interested on behalf of Mrs. Syster in seeing that no ex parte orders are made in your office. We assume that you have on file our notification and since we have had no word from you that nothing has been done since the Supreme Court decision in the case. Are we correct in this assumption?

Respectfully yours,

Hawley & Hawley
Attorneys for Mary E. Syster.

JBH:lmc

10115

JAMES R. BOTHWELL W. ORR CHAPMAN

BOTHWELL & CHAPMAN

LAWYERS

ROOMS 5,6,7,8,9 AND 10 WOODS BUILDING

TWIN FALLS, IDAHO

January Fourteenth
Nineteen twenty-five

W. G. Swendsen, Commissioner of Reclamation,
Boise, Idaho.

Dear Sir:

IN RE: PERMIT NO. 10415.

In reply to your recent communication you are advised that I will be in Boise on Friday and Saturday, January 16th and 17th, and will take up this matter with you.

Very truly yours,

James R. Bothwell

JRB-A

10415

HA LEY & HAWLEY
ATTORNEYS AND COUNSELORS

JAMES H. HAWLEY
JESS B. HAWLEY
O. W. WORTHWINE
SAM S. GRIFFIN
JAMES H. HAWLEY, JR.

OVERLAND BUILDING

BOISE, IDAHO

January 2-1925

Hon. Warren G. Swendsen,
Department of Reclamation,
Boise, Idaho

Dear Mr. Swendsen:

Representing Mrs. Mary E. Syster, we respectfully suggest that before any extension is made of the time in which to complete Permit No. 10415, a hearing be had. We assume that you will be guided in your action by the opinion of the Attorney General, but at the same time, we would appreciate your ordering a formal hearing so that we may make presentation on behalf of Mrs. Syster of any reasons for denying relief which is sought by Mr. Hazzard, the owner of that permit.

Very truly yours,

J Hawley Hawley

JBH:lmc

10115

RECEIVED
JAN 3 1925
DEPARTMENT OF RECLAMATION

December 2 , 1924

Mr. J. S. Hawley
Attorney at Law
Overland Building
Boise, Idaho

Dear Mr. Hawley:

Yours of the 27th received. The request of Mary E. Syster is being filed and receipt of same is acknowledged by the enclosed letter.

At your convenience, I would suggest you drop in the office and look over the files in this matter and particularly at the recent letter I have sent Judge Bothwell.

Very truly yours,

Commissioner of Reclamation

WGS:EK

10415

December 29, 1924

Re: Permit No. 10415 ✓

Mary E. Syster
c/o Hawley & Hawley
Overland Building
Boise, Idaho

Dear Madam:

Receipt of your communication dated December 16, relating to the above stated permit is received.

You are advised that recently there was filed in this office a request for a correction of what is alleged to be an error in the records with respect to the above stated permit, the same having been filed by J. R. Bothwell, attorney for the holder of said permit.

No final action has been taken on said request. The same is being held under advisement and will probably be submitted to the Attorney General for his opinion on the law points involved before a final conclusion is reached.

If, in view of the foregoing conditions, you still desire a hearing before final action is taken, please advise me and appropriate action in respect to such request as you may make will be taken.

Very truly yours,

Commissioner of Reclamation

WGS:EK

10415

Boise, Idaho
December 16, 1924

Mr. Warren G. Swendsen,
Commissioner of Reclamation,
Boise, Idaho.

Dear Mr. Swendsen:

I understand that an effort is being made by Mr. William Hazzard, or others acting for him, to have an extension of time for the completion of works under permit No. 10415, As I am a holder of certain valid and existing permits, to-wit: Nos. 13362 and 13363, I am very much interested in any extension which you may grant, and believing as I do that the time has already been over-extended on permit #10415, I desire to contest before you any further extension. Will you therefore, apprise me of any application made by Mr. Hazzard or anyone for him and give me an opportunity to be heard in objection to any extension?

Yours truly,

Mary E Lyster

RECEIVED
DEC 29 1924
DEPARTMENT OF RECLAMATION

10415

December 23, 1924.

Re: Permit No. 10415

Hon. J. R. Bothwell,
Attorney at Law,
Twin Falls, Idaho

My dear Sir:

This will acknowledge receipt of your communication of the 11th inst. relating to the above stated permit, and enclosing your application for correction of record.

This communication, together with enclosures, have received my attention, with the result that I am unable to find any specific authority for my acting in accordance with your request. It should be observed, however, that I have merely consulted the statutes and records in the case from the standpoint of a layman and have sought no legal advice in the matter.

In view of these circumstances and in order that I may act advisably, will you be good enough to let me have a citation of any authority you may consider vested in me, to correct the record of this office, in accordance with your request?

If, upon receipt of such citations or argument you may care to present, I am still in doubt as to the proper procedure, I will refer the matter to the Attorney General's office for advice.

Very truly yours,

Commissioner of Reclamation

WGS:P

10415

MEMO

December 19, 1924.

Re: Permit No. 10415

The attached application made by J. R. Bothwell, should be disposed of in some manner.

Upon studying the record on this case, I find that originally William C. Hazzard, filed an affidavit stating that he was the owner and holder of permits Nos. 7056 and 10415, and made the ordinary application for extension of time during pendency of litigation.

Upon a consideration of this affidavit, the then State Engineer, under date of May 26, 1917, advised Mr. Hazzard that title to Permit No. 7056 did not appear of record in his name and that such title did appear to vest with the Clear Lake Power and Improvement Company, and that any applications for extension should be made regularly by such company.

In response to this advice, another affidavit was made by William C. Hazzard as president of the Clear Lake Power and Improvement Company. This affidavit, however, designates only permit 7056 and makes formal application for extension due to pendency of litigation for this permit only.

State Engineer's order of June 23, 1917, was apparently based on the second affidavit and consequently, grants extension of time for that permit and not for permit 10415.

If it can be construed that the first affidavit made May 19th and filed May 21, 1917, should remain in full force and effect relative to Permit 10415, then it might be proper to hold that State Engineer should have made an order extending time under this permit, otherwise the State Engineer's order of June 23, 1917, would appear to fully comply with the second affidavit filed.

It would seem that if at that time, extension was desired for permit 10415, that the matter would have been called to the State Engineer's attention, rather than waiting until this late date.

Geo. H. Carter

10415

BEFORE THE COMMISSIONER OF RECLAMATION OF THE STATE OF IDAHO.

- - - - - - - - - -

IN THE MATTER OF EXTENSION OF)
TIME WITHIN WHICH TO COMPLETE)
THE WORKS UNDER PERMIT NO. 10415.) ORDER

- - - - - -

Upon reading and filing the application and affidavit of Wm. C. Hazzard, asking that an order be entered nunc protunc as of the date June 23, 1917, granting an extension of time for the performance of work under Permit No, 10415, on account of litigation then pending in the District Court of the Fourth Judicial District of the State of Idaho in and for Gooding County, wherein the Clear Lake Power and Improvement Company was plaintiff and Chriswell, et al., were defendants, and that the time for the performance of work under Permit No. 10415 be extended to correspond to the extension of time then given for the performance of work under Permit No. 7056, and good cause appearing therefor, it is hereby ORDERED that the time for the performance of work under Permit No. 10415, be, and the same hereby is extended in accordance with the terms and provisions of that certain order dated June 23, 1917, granting an extension of time for performance of work under Permit No. 7056.

Dated this _____ day of December, A.D. 1924.

This order to be entered nunc protunc as of June 23, 1917.

_____
Commissioner of Reclamation.

10415

JAMES R. BOTHWELL W. ORR CHAPMAN

BOTHWELL & CHAPMAN

LAWYERS

ROOMS 5, 6, 7, 8, 9 AND 10 WOODS BUILDING

TWIN FALLS, IDAHO

December Eleventh
Nineteen twenty-four

W. G. Swendsen, Commissioner of Reclamation,
Boise, Idaho.

Dear Sir:

We herewith enclose application for correction of record in the matter of the extension of time within which to complete the work under Permit No. 10415. The affidavit states the facts and they may be verified from the records referred to therein.

Very truly yours,

James R. Bothwell

JRB-A
Encs.

10415

BEFORE THE COMMISSIONER OF RECLAMATION OF THE STATE OF IDAHO.

- - - - - - -

IN THE MATTER OF EXTENSION OF TIME WITHIN WHICH TO COMPLETE THE WORKS UNDER PERMIT NO. 10415.

APPLICATION FOR CORRECTION OF RECORD.

- - - - - -

Comes now Wm. C. Hazzard, through his attorneys, James R. Bothwell, Esq., and George Herriott, Esq., and hereby makes application that an order be entered nunc protunc as of the date June 23, 1917, granting an extension of time for performance of work under Permit 10415 on account of litigation then pending in the District Court of the Fourth Judicial District of the State of Idaho, in and for Gooding County, wherein the Clear Lake Power and Improvement Company was plaintiff and Chriswell, et al., were defendants, and that said order be entered extending the time as the same now appears under Permit No. 7056, of said date.

James R. Bothwell

George Herriott

Attorneys for Wm. C. Hazzard,
Residing at Twin Falls, Idaho.

10415

Rec'd Dec. 13-24

BEFORE THE COMMISSIONER OF RECLAMATION OF THE STATE OF IDAHO.

- - -

IN THE MATTER OF EXTENSION OF)
TIME WITHIN WHICH TO COMPLETE)
THE WORKS UNDER PERMIT NO. 10415.)

- - - - -

STATE OF IDAHO,)
) SS.
County of Twin Falls.)

WM. C. HAZZARD, being duly sworn deposes and says:

That he is the Wm. C. Hazzard mentioned in permit No. 10415, issued by the State Engineer's office of the state of Idaho; that on the 9th day of May, A.D. 1917, this affiant made a joint application to the State Engineer of the State of Idaho for the extension of time within which to perform work under water right permits 7056 and 10415, issued by the State Engineer of the State of Idaho; that said application was based on the ground that litigation was then pending, which involved the right to the title to said permits, which litigation was a suit then pending in the District Court of the Fourth Judicial District of the State of Idaho, in and for Gooding County, entitled, "Chas. Lance Power & Imp. Co. v. Chriswell et al;" that from an examination of the records in the Commissioner of Reclamation office at Boise, it appears that said application was filed in the State Engineer's office under the records of Permit No. 7056 and not under the records of Permit No. 10415; that the State Engineer of the State of Idaho granted said application for said extension of time and entered an order on June 23, 1917, directing that the time be extended as to Permit No. 7056, but an examination of the record fails to show that an order is now in the files granting the extension for Permit No. 10415; that a contest was instituted in the State Engineer's Office of the state of Idaho after the entry of the order extending the time under Permit No. 7056 by one Syster, wherein the said Syster challenged the rights of the applicant under Permit 7056 and Permit 10415; that after a full hearing in said matter the StateEngineer on January 4, 1919, entered findings of fact, conclusions of law and decree dismissing said contest proceedings and holding that Permits 7056 and 10415 were then in good standing and that all work had been done which was required to be done under said permits; that in said findings and decree the State Engineer made an order extending the time within which work was to be performed under Permit 10415 until the final termination of the Chriswell litigation; that the Chriswell suit was carried to the Supreme Court of the state of Idaho, and that final decree was entered in the spring of 1919; that thereafter the said Syster instituted suit in the District Court of the Fourth Judicial District of the State of Idaho, in and for Gooding County, to contest said permits; that said action terminated in the District Court against the said Syster and in favor of affiant herein, and that said cause was thereupon appealed to the Supreme Court of the State of Idaho; written briefs were filed and presented to the court

and said action has been finally disposed of in favor of this affiant and against the said Syster; that on page 8 of the brief of the said Syster it is admitted and stated that the time for performance of work was extended under Permit 10415 upon affiant's application of May 9, 1917; that in the decision of the Supreme Court dated June 2, 1924, the court states that the extension time for performance of work under Permit 10415 was applied for on May 9, 1917, and was granted, and the time extended; that an abstract of the record in the office of the Commissioner of Reclamation fails to show that an extension was granted for Permit 10415 on account of the Chriswell litigation; that no entry is made under Permit 10415 at the office of the Commissioner of Reclamation of the State of Idaho; that the time was, in fact, extended under Permit 10415, the same as it was extended under Permit 7056; that the record of the State Engineer's office, which is now the office of the Commissioner of Reclamation, should be corrected to comply with the facts in the case.

Further affiant saith not.

Wm C. Hazzard.

SUBSCRIBED and SWORN to before me this 9th day of December, A.D. 1924.

George Harriott
Notary Public for the State of Idaho Residing at Twin Falls Idaho

November 7, 1924.

Re: Permit No. 10415

Received and filed for record in the Department of Reclamation of the State of Idaho, at 11:30 A.M., November 7,1924, notice that there has been a final determination of the case of Mary E.Syster vs. William C. Hazzard, et al, in the Supreme Court of Idaho.

W. G. SWENDSEN,
Commissioner of Reclamation.

By_____
Custodian of Records.

Prof C.W. Sm

10415

GEORGE HERRIOTT
ATTORNEY AT LAW
TWIN FALLS, IDAHO

November 3rd, 1924.

Department of Reclamation of
the State of Idaho and the
State Engineer of said State.

Dear Sirs:

In the matter of permit ~~10415~~ No. 10415 and the several ~~extensions~~ extensions of time granted thereunder for the completion of works and referring to my letters to you of June 7th, 1924 and September 8th, 1924, and your letter to me dated September 13th, 1924 and your order inclosed therein removing cessation of disability, I hereby notify your department that there has been a final determination of the case of Mary E. Syster vs. William C. Hazzard et al in the Supreme Court of Idaho and remittitur from the Supreme Court was filed in the office of the Clerk of the ~~District~~ District Court of the Fourth Judicial District of the State of Idaho for Gooding County on November 1st, 1924. The filing of this remittitur removes the disability upon which extension of time was granted, unless an appeal is taken by the appellant in this case to the Supreme Court of the United States. If such appeal is taken then I will move your department for a further extension of time.

This notice is given in compliance with the requirements of your order of recent date.

Very truly yours,

William C. Hazzard.

Buhl, Idaho.

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GEORGE HERRIOTT
ATTORNEY AT LAW
TWIN FALLS, IDAHO

Sept. 15, 1924.

Hon. W. G. Swendsen,
Commissioner of Reclamation,
Boise, Idaho.

File Permits

Dear Sir:

I am in receipt of yours of the 13th inst. in re permit 10415 in which you inclose an order of extension of time and cessation of disability of June 12th.

The order is very satisfactory andfully meets andremoves the difficulty arising from our premature notice of removal of disability of June 12th.

Please accept our thanks for your prompt and courteous attention.

Very truly yours,

George Herriott

10415

September 13, 1924.

Re: Permit 10415

Mr. George Herriott,
Attorney at Law,
Twin Falls, Idaho.

Dear Sir:

There is enclosed herewith copy of order removing the cessation of disability which was filed on June 12,1924.

I have taken the trouble to look up this case in the Supreme Court and have incorporated certain action to date which has been had by the court in this case.

I am of the opinion that this order is sufficient to meet the requirements. However, should you have any suggestions to make regarding the form of this order, same will be received and considered.

Very truly yours,

W. G. SWENDSEN,
Commissioner of Reclamation

By
Assistant.

GNC:E
Encl.

10415

STATE OF IDAHO

Department of Reclamation

Boise

IN THE MATTER OF THE APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER PERMIT NO. 10415, AS PROVIDED IN SECTION 3254, LAWS OF THE STATE OF IDAHO RELATIVE TO PUBLIC WATERS, WATER RIGHTS AND IRRIGATION.

ORDER GRANTING EXTENSION OF TIME

WHEREAS, Under date of March 31, 1919, certificate of approval was granted under the terms and provisions of Permit 10415, which certificate of approval in fact extended the time during which the terms and provisions of Permit 10415 might be complied with, until such time as the pendency of a matter within the jurisdiction of the District Court of the Fourth Judicial District of the State of Idaho, might be removed; and,

WHEREAS, Under date of June 12, 1924, William C. Hazzard, holder of said Permit 10415, advised the Department of Reclamation that such disability was removed by reason of the fact that the Supreme Court had filed its opinion in this case, thereby removing said pendency of action; and,

WHEREAS, Such notification by permit holder was filed in the Department of Reclamation prior to the period of time allowed for the Supreme Court considering petition for rehearing; and,

WHEREAS, Subsequent to this date and on June 20, 1924, petition for rehearing of the above mentioned case was filed with the said Court; and,

WHEREAS, Under date of July 31, 1924, the Supreme Court ordered respondents to file an answer to said petition, which answer was filed on August 19, 1924:

NOW, THEREFORE, It appearing to the Department of Reclamation that the previous disability is again in effect, IT IS HEREBY ORDERED That the aforesaid notification by permit holder under date of June 12, be voided, set aside and held for naught, and that said disability clause be declared still in effect as of date of June 12, 1924, and it is further ordered that permit holder be not required to file notification of final removal of said disability until such time as remittitur of the Supreme Court finally goes down to the trial court in said case.

11 Sept. '24

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office, at Boise, Idaho, this 11th day of September, 1924.

Commissioner of Reclamation

10415

No. 15399.

APPLICATION FOR PERMIT
To Appropriate the Public Waters of the
State of Idaho

Name of applicant: William C. Hazzard

Postoffice address: Clear Lake County: Gooding State: Idaho.

The quantity of water claimed is 1,000 cubic feet per second.

Source of water supply: Clear Lake and its feeders.

Location of point of diversion: Lot 7, Sec. 2 Twp. 9 S. R. 14 E. B. M. N. 54° 08' E. 1685.5 feet from Southeast corner of Southwest quarter Sec. 2 Twp. 9 S. R. 14 E. B. M. County of Gooding.

To be used for: Power

Mining, milling, power, manufacturing, transportation or other purposes: Yes.

(a) At what point: Foot of Devils Wash Board N. 81° 00' E. 576 ft. from the Southeast corner of SW¼ Sec. 2, Twp. 9 S. R. 14 E. B. M.

(b) Amount of power to be generated: 7500 H.P. under 85 ft. Head.

(c) Is water to be returned to any stream? Yes. (d) If so, name stream and locate point of return: Snake River, Lot 7, Sec. 2, Twp. 9 S. R. 14 E. B. M. N. 81° 00' E. 576 ft. from the Southeast corner of SW¼ Sec. 2, Twp. 9 S. R. 14 E. B. M.

Estimated cost of works: $20,000.

Description of works for diversion:
I. Kind of works: Dam., open canal, forebay and pipe lines.

II. Dimensions of works:
(a) Height of dam 12 feet, length of dam at top 100 feet, length of dam at bottom 75 feet. Material used in construction: broken stone, earth and concrete.

(b) Capacity of reservoir Clear Lake as shown on survey plat.

(c) Size of headgate, width 10 feet, height 14 feet.

(d) Conduit, concrete canal, width at bottom 21.5 feet, width at water line 25 feet, depth of water 13 feet; diameter of pipe 90 inches; average grade per mile is 163.6 feet. Length of conduit is .23125 miles, and it crosses the following quarter sections: Lot 7, Sec. 2 Twp. 9 S. R. 14 E.B.M.

The time required for the completion of the construction of such work is five years.

The time required for the complete application of the water to the proposed use is six additional years.

BE IT KNOWN That the undersigned hereby makes application for a

10415 11 Sept. 1924

permit to appropriate the public waters of the State of Idaho as herein set forth.

William C. Hazzard, Applicant

Date of first receipt at office of State Engineer, 10:25 A.M., June 29, 1914.

APPROVAL OF STATE ENGINEER

The number of this permit is 10415.
Recorded in Book 35, Page 10415, Approved July 8, 1914.
This is to certify that I have examined the within application for a permit to appropriate the public water of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions.
Bond in the sum of $2,000.00 to be filed on or before September 6, 1914.
One-fifth of the work above specified to be completed on or before January 8, 1917.
The whole of said work to be completed on or before July 8, 1919.
Beneficial use of water appropriated in accordance herewith, to be made on or before July 8, 1925.
Witness my hand this 8th day of July, 1914.

F. P. KING
State Engineer.

Remarks: See Deed recorded under permit No. 7056.

OFFICE OF STATE ENGINEER

Boise, Idaho, March 31, 1919.

In the Matter of the Application for Extension of Time for Completion of Works under Permit No. 10415, as Provided in Section 3254, Laws of the State of Idaho, relative to Public Waters, Water Rights and Irrigation.

CERTIFICATE OF APPROVAL

To William C. Hazzard:

This is to certify that, upon the showing heretofore made and filed in the office of the State Engineer of Idaho to the effect that you are prevented from proceeding under the terms and conditions set forth in your above numbered permit because of the pendency of a matter within the jurisdiction of the District Court, of the Fourth Judicial District of the State of Idaho, in and for Gooding County, for the cancelation of the said permit, and over which you have no control, you are hereby relieved from proceeding further under said terms and conditions until such time as the disability hereinbefore mentioned shall have been removed, or until you shall have been notified by this office of the revocation of this certificate.

This certificate will operate to extend the time or times for compliance with the terms and conditions of your permit as originally issued a period of time equal to the period elapsing from the date of this certificate to the date of the removal of the disability hereinbefore mentioned, or until you shall have been notified of the revocation of this certificate: Provided: that you notify this office of the removal of said disability within thirty days after it is removed, and unless such notice is given, no rights will be acquired under this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office at Boise, Idaho, this 31st day of March, 1919.

W. G. SWENDSEN,
State Engineer.

(SEAL)

June 12, 1924.

Department of Reclamation,
of the State of Idaho and
the State Engineer of said State.

Dear Sirs:

You will note from the records in your office with reference to Permit 7056 and 10415 for the appropriation of waters of Clear Lake and Clear Creek for power purposes, that several extensions and corrected extensions of time were granted for the completion of works from the State Engineer to William C. Hazzard, based upon litigation which interferred with the work in the cases of the Clear Lake Power and Improvement Company vs. John Chriswell, et al and Mary E. Syster Vs. William C. Hazzard et al.

In the Judgment and Decree entered by the State Engineer January 4th, 1919, it was ordered "That the extension of time heretofore granted the contestees for the completion of works because of the litigation involved in the case of the Clear Lake Power and Improvement Company, a corporation, plaintiff, vs. John Chriswell et al defendants, in the District Court of the Fourth Judicial District of the State of Idaho in and for Gooding County, is hereby continued until the final termination of said suit by a retrial of the issues in said District Court under an opinion and remittitur of the Supreme Court", and in his certificate of approval dated March 31, 1919, of an application for extension of time for completion of works, based upon the litigation in the case of Mary E. Syster vs. William C. Hazzard et al, the Commissioner of Reclamation required that notice to said Commissioner should be given of the cessation of said disability within thirty days after such disability ceased.

In compliance with such requirement, the holder of said permits, William C. Hazzard, does hereby notify the Department of Reclamation and the said State Engineer that on June 2nd, 1924, an opinion of the Supreme Court of Idaho was filed with the Clerk of said Court, in favor of the defendant and respondent, Hazzard and against plaintiff and appellant, Mary E. Syster, and in which the validity of said Permit 10415 was established in the said Hazzard, and said permit 7056 was declared to have been abandoned upon the application of the work done under permit 7056 to the

to the said permit 10415. The case of the Clear Lake Power and Improvement Company vs. Chriswell et al, was decided prior to the decision in the Syster-Hazzard case, in favor of the plaintiff and appellant and against the defendant and respondent, Chriswell, the said Hazzard being the successor in interest of the successful plaintiff and appellant, the Power and Improvement Company. The decision of the said Syster-Hazzard case in favor of the said Hazzard on June 2nd, 1924, removes all disability, unless the appellant Syster takes further steps in the case, either by moving for a rehearing or by appeal to the Supreme Court of the United States or other action. If further action is taken which will continue to interfere, as above mentioned the undersigned will make additional application to the Department of Reclamation for further extension.

I would suggest that the Department acknowledge receipt of this communication upon the copy of this letter and return to me as evidence of my compliance with the order to report within thirty days the cessation of the said disability.

Yours respectfully,

William C. Hazzard,
Buhl, Idaho.

Received and filed for record in the Department of Reclamation at Boise, Idaho, at 9:00 A. M. June 17, 1924.

W. G. SWENDSEN
Commissioner of Reclamation

IN THE MATTER OF THE APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER PERMIT NO. 10415, AS PROVIDED IN SECTION 3254, LAWS OF THE STATE OF IDAHO RELATIVE TO PUBLIC WATERS, WATER RIGHTS AND IRRIGATION.

ORDER GRANTING EXTENSION OF TIME

WHEREAS, Under date of March 31, 1919, certificate of approval was granted under the terms and provisions of Permit 10415, which certificate of approval in fact extended the time during which the terms and provisions of Permit 10415 might be complied with, until such time as the pendency of a matter within the jurisdiction of the District Court of the Fourth Judicial District of the State of Idaho, might be removed: and,

WHEREAS, Under date of June 12, 1924, William C. Hazzard, holder of said Permit 10415, advised the Department of Reclamation that such disability was removed by reason of the fact that the Supreme Court had filed its opinion in this case, thereby removing said pendency of action; and,

WHEREAS, Such notification by permit holder was filed in the Department of Reclamation prior to the period of time allowed for the Supreme Court considering petition for rehearing; and,

WHEREAS, Subsequent to this date and on June 20, 1924, petition for rehearing of the above mentioned case was filed with the said Court; and,

WHEREAS, Under date of July 31, 1924, the Supreme Court ordered respondents to file an answer to said petition, which answer was filed on August 19, 1924;

NOW, THEREFORE, It appearing to the Department of Reclamation that the previous disability is again in effect, IT IS HEREBY ORDERED That the aforesaid notification by permit holder under date of June 12, be voided, set aside and held for naught, and that said disability clause be declared still in effect as of date of June 12, 1924, and it is further ordered that permit holder be not required to file notification of final removal of said disability until such time as remittitur of the Supreme Court finally goes down to the trial court in said case.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office, at Boise, Idaho, this 11th day of September, 1924.

W. G. SWENDSEN,
Commissioner of Reclamation

(SEAL)

STATE OF IDAHO)
) ss.
County of Ada)

I, W. G. SWENDSEN, Commissioner of Reclamation of the State of Idaho, hereby certify the above and foregoing to be a full, true and correct copy of Permit to Appropriate the Public Waters of the State of Idaho, No. 10415, as the same appears of record in the Department of Reclamation of the State of Idaho, in Book 35 of Permits, at page 10415.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office at Boise, Idaho, this day of , 1925.

W. G. SWENDSEN
Commissioner of Reclamation

By_____
Custodian of Records.

Pet. Reh. filed June 20th
Order Court for Answer to
Petition Reh. - file answer
July 31. Filed Aug 19,
Idaho. Attorney

GEORGE HERRIOTT
ATTORNEY AT LAW
TWIN FALLS, IDAHO

September 8, 1924.

Department of Reclamation
of the State of Idaho and
the State Engineer of said State.

Dear Sir:

You will note from the records in your office with reference to permits Nos. 7056 and 10415 for the appropriation of the waters of Clear Lake and Clear Creek that several extensions and corrected extensions of time were granted for the completion of works from the State Engineer to William C. Hazzard, based upon litigation which interfered with the work in the cases of the Clear Lake Power and Improvement Company vs. John Chriswell et al and Mary E. Syster vs. William C. Hazzard, et al. In one of the earlier orders granting extension it was provided that the applicant should report the status of the situation every sixty days, and that thereafter and on June 24, 1918, the State Engineer made a further order in which the requirement of reporting every sixty days was rescinded and the requirement made that notice to the State Engineer should be given of the cessation of the disability within thirty days after such disability ceased.

On June 2nd, 1924, the supreme court of the State of Idaho rendered and filed its opinion in the case of Syster v. Hazzard above mentioned in which the validity of the permit 10415 was established in the writer of this letter and application. This decision, if no application for rehearing had been filed by the appellant in said case, would have been final in the case and would have removed all disability to a continuance upon the works of diversion.

Owing to some uncertainty as to when the thirty days notice of the cessation of the disability would commence to run as provided in the order of extension, that is, whether it would commence to run upon the filing of the opinion of the Supreme Court or upon the coming down of the remittitur, the writer thought best to give notice of the cessation of the disability upon the filingof the opinion, and, accordingly wrote your department on June 7th, 1924, giving notice that such disability had ceased, provided no motion was made by appellant for a rehearing before the supreme Court or appeal taken to the Supreme Court of the United States.

Since the writing of the above letter of June 7th, 1924, giving notice of cessation, the said appellant has filed a motion before the Supreme Court of the State of Idaho for arehearing of said case of Syster v. Hazzard and the same is still pending and undecided.

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In view of my error in notifying your department of the cessation of the disability by my letter of June 7th, 1924, above mentioned, andthe further fact that such disability has not ceased and said case is still pending, I hereby apply to your department to allow me to withdraw my notice of June 7th, or to have such amendment made in your record under permit 10415 as will show that my notice was in error and that the extension of time is continued until final determination of the said case is had andsuch disability is removed, we, of course, to give the thirty day notice to your department when the case is fully decided and the remititur comes down.

The facts with reference to the filing by the appellant of an application to the Supreme Court for a rehearing in the Syster-Hazzard case can be verified by inquiry of the Clerk of the Supreme Court.

I would be glad to have you write upon this subject, giving me your views as to the best way to correct the record and what you have done with reference thereto.

Yours Respectfully,

William C. Hazzard

Buhl, Idaho.

10415

GEORGE HERRIOTT
ATTORNEY AT LAW
TWIN FALLS, IDAHO

June 12, 1924.

Recd - 17 June 24

Department of Reclamation
of the State of Idaho and
the State Engineer of said State.

Dear Sirs:

You will note from the records in your office with reference to permits 7056 and 10415 for the appropriation of waters of Clear Lake and Clear Creek for power purposes, that several extensions and corrected extensions of time were granted for the completion of works from the State Engineer to William C. Hazzard, based upon litigation which interfered with the work in the cases of the Clear Lake Power and Improvement Company vs. John Chriswell, et al and Mary E. Syster vs. William C. Hazzard et al.

In the Judgment and Decree entered by the State Engineer January 4th, 1919, it was ordered "that the extension of time heretofore granted the contestees for the completion of works becuase of the litigation involved in the case of of the Clear Lake Power and Improvement Company, a corporation, plaintiff, vs. John Chriswell et al, defnednats, in the District Court of the Fourth Judicial District of the State of Idaho in and for Gooding County, is hereby continued until the final termination of said suit by a retrial of the issues in said District Court under and an opinion and remittitur of the Supreme Court", andin his certificate of approval dated March 31, 1919, of an application for extension of time for completion of works, based upon the litigation in the case of Mary E. Syster vs. William C. Hazzard et al, the Commissioner of Reclamation required that notice to said Commissioner should be given of the cessation of said disability within thirty days after such disability ceased.

In compliance with such requirement, the holder of said permits, William C. Hazzard, does hereby notify the Department of Reclamation and the said State Engineer that on June 2nd, 1924, an opinion of the Supreme Court of Idaho was filed with the Clerk of said Court in favor of the defendant and respondent, Hazzard and against plaintiff and appellant, Mary E. Syster, and in which the validity of said permit 10415 was established in the the said Hazzard, and said permit 7056 was declared to have been abandoned upon the application of the work done under permit 7056 to the said permit 10415. The case of the Clear Lake Power and Improvement Company vs. Chriswell et al, was decided prior to the decision in the Syster-Hazzard case, in favor of the plaintiff and appellant and against the the defendant and respondent,

Chriswell, the said Hazzard being the successor in interest of

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the successful plaintiff and appellant, the Power and Improvement Company. The decision of the said Syster-Hazzard case in favor of the said Hazzard on June 2nd, 1924, removes all disability, unless the appellant Syster takes further steps in the case, either by moving for a rehearing or by appeal to the Supreme Court of the United States, or other action. If further action is taken which will continue to interfere, as above mentioned, the undersigned will make additional application to the Department for further extension.

I would suggest that the department acknowledge receipt of this communication upon the copy of this letter and return to me as evidence of my compliance with the order to report within thirty days the cessation of the said disability.

Yours respectfully,

William C. Hazzard

Buhl, Idaho.

Received and filed for record in the Department of Reclamation at Boise, Idaho, at 9 o'clock A. M. June 17 - 1924.

Commissioner of Reclamation

Recorded in Book 35 Page 10415

10415

July 30, 1920.

Re: Permit 10415-Wm. O. Maynard.

U. S. Fidelity & Guaranty Co.,
702-3-4- Kearns Building,
Salt Lake City, Utah.

Gentlemen:-

Replying to yours of the 28th inst. would say that the above numbered permit is and has been for some months, in litigation in the courts. The bonding company is, therefore, released from any further liability under the bond filed in connection with same.

Very truly yours,

W. G. SWENDSEN,

Commissioner of Reclamation.

By_____

10415

Salt Lake 4 6-2-20 5000 ★

UNITED STATES FIDELITY AND GUARANTY COMPANY,

HARRY LEONARD, MANAGER,

E. A. BJORKLUND, ASSISTANT MANAGER,

PHONE, WASATCH 3784. **702-3-4 KEARNS BUILDING.**

SALT LAKE CITY, UTAH.

July 28, 1920 ;;

Commissioner of Reclamation,

Boise, Idaho.

IN RE: WM. C. HAZZARD, WATER PERMIT #10415

Dear Sir:

We have been requested by our agent to cancel our bond covering the above permit.

Will you kindly advise us whether or not the same is in good standing?

Thanking you, we are

Yours very truly,
Harry Leonard, Manager,

By E. A. Bjorklund
ASSISTANT MANAGER.

EAB::RH.

10415

RECEIVED
JUL 30 1920
DEPARTMENT OF RECLAMATION

BEFOR THE STATE ENGINEER OF THE STATE OF IDAHO.

In the Matter of the A pllication of William C. Hazzard, Louise Hazzard, his wife, the Mutual Light Heat and Power Company, a corporation, and E. J. Finch, Trustee, for an Extension of time within which to Complete Works of Diversion under Permit No. 10415.

Application for Extension of Time within whichto Complete W orks, under Permit 10415.

Rec'd Mar 31-19

Come now the applicants above named and apply to the State Engineer of the State of Idaho for an extension of time within which to complete workd of diversion under permit No. 10415, upon the ground that the applicants have been prevented, are being prevented and will be prevented from proceeding with the works of diversion under said permit by reason of certain proceedings heretofore brought before the said State Engineer by one Mary E. Syster for the cancellation of said permit and by reason of a certain action brought by the said Mary E. Syster against the above named applicants in the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Gooding, for the cancellation of said permit the property, property rights and water rights described in said permit being located in said Gooding County, said Mary E. Syster having brought the action aforesaid under section 4 of House Bill No. 223 of the 1909 Session Laws of Idaho, page 302, instead of ~~x~~ taking an appeal from the adverse decision of the State Engineer under the proceedings before the last named officer.

This application is made and based upon the records and files in the State Engineer's office under said permit No. 10415 and under the proceedings in said office by the said Mary E. Syster for the cancellation of said permit, above mentioned and upon the affidavit of William C. Hazzard, hereto attached, and upon the record and files in said action in said District Court

10415

Dated th 25th day of March, 1919.

William C. Hazzard

Louise Hazzard

E. J. Frick Trustee

MUTUAL LIGHT, HEAT AND POWER COMPANY,

By E. V. Burg.

Secretary.

10415

BEFOR THE STATE ENGINEER OF THE TATE OF IDAHO.

In the Matter of the Application of William C. Hazzard, Louise Hazzard, his wife, the Mutual Light, Heat and Power Company, a corporation, and E. J. Finch, Trustee, for an Extension of Time within which Complete the Works of Diversion under permit No. 10415.

A F F I D A V I T.

State of Idaho,)
: SS.
County of Twin Falls.)

William C. Hazzard, being first duly sworn, deposes and says:

That he and his wife are the owners of permit No. 10415 and the property, property rights and water rights thereunder, subject to certain equities and legal title vested in E. J. Finch as trustee for the benefit of the said Mutual Light, Heat and Power Company, which said permit was granted by the State Engineer of the State of Idaho, and approved on July 8th, 1914, and the said William C. Hazzard makes this affidavit for and on behalf of all of the applicants above mentioned.

That on or about the 26th day of October, 1917, one Mary E. Syster made application to the State Engineer of the State of Idaho for two certain permits to divert and use the waters mentioned and described in said permit No. 10415, and said applications were thereafter approved by the said State Engineer as permits Nos. 13362 and 13363, which said last named permits post date said permit No. 10415.

That said Mary E. Syster, acting under said permits, andon or about December 18th, 1917, filed a contest petition in the said State Engineer's office against said permit No. 10415 for the purpose of cancelling the same, and thereafter and on or about the 25th day of February, 1918, the said Mary E.

10415

Syster withd[illegible] said contest petition, [illegible] thereafter and on or about the 26th day of February, 1918, filed a contest petition against permit No. 10415 for the cancellation of the same.

That thereafter a hearing was had upon said contest petition before the State Engineer of the State of Idaho, and after the submission of evidence by all parties thereto and after the examination of the works of diversion under said permit No. 10415 by the said State Engineer, a decision and decree was entered by said State Engineer adverse to the said Mary E. Syster under said contest petition in which the application of the said Mary E. Syster for the cancellation of said permit No. 10415 was denied, and in and by said decsion and decree an extension of time was granted for the completion of ,the works of diversion under said permit No. 10415, from the time of the filing of said contest petition until said litigation is completed, in the following words:

"It is further ordered that the time for completion of said works is hereby extended in accordance with the application therefor filed by the contestees in this office on the 26th day of May, 1918, from the time of the filing of the contest petition by the contestant in the proceeding, to-wit, the 18th day of December, 1917, up to and during the time for appeal from this decision and decree, and if appeal is taken, such extension is continued during the period of such litigation and until the same is finally terminated."

That instead of appealing from the said decision and decree of the said State Engineer in said contest petition, the said Mary E. Syster has brought action in the District Court of the Fourth Judicial District of the State of Idaho, in and for Gooding County, against said applicants above named, for the cancellation of said permit No. 10415 under Section 4 of House Bill No. 223 of the 1909 Session Laws of Idaho, page 302.

That by the bringing of the action de novo in the district as above set forth, instead of appealing, some doubt is cast upon the application of the following words of the above quoted portion of the decree in its application to the period of extension granted therein: "and if appeal is taken, such

extension is continued during the period of such litigation and until the same is finally terminated," in this, that the period of extension is made to depend upon the contingency of appeal, while the intent was to continue during the period of ~~appeal~~ litigation, whether such litigation was continued by appeal or by new action in the District Court.

That by the bringing of said contest proceedings by the said Mary E. Syster before the said State Engineer and by the bringing of said action in the District Court the applicants have been prevented and are being prevented and will be prevented from proceeding with the construction of the works of diversion under said permit No. 10415 until such litigation is fully completed and terminated.

WHEREFORE, by reason of the ambiguity caused by the use of the words above quoted in the decision and decree of the said State Engineer as to the extension of time, the above named applicants hereby respectfully apply to the State Engineer of the State of Idaho for an order extending the time for the completion of the works of diversion under said permit No. 10415, from the 18th day of December, 1917, until the litigation under said proceedings before the State Engineer and under the said action by the said Mary E. Syster against the above named applicants in the District Court, be completed and finally terminated, as is provided by Section 3254 of the Idaho Revised Codes, as amended by the act of the legislature of the State of Idaho approved March 15, 1915, as shown by the Chapted 133 of the Session Laws of 1915, page 289.

William C. Hazzard

Subscribed and sworn to before me this 25th day of March, 1919.

George Arnott

Notary Public.

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OFFICE OF STATE ENGINEER.

Boise, Idaho, March 31, 1919.

In the Matter of the Application for Extension of Time for Completion of Works under Permit No. 10455, as Provided in Section 3254, Laws of the State of Idaho Relative to Public Waters, Water Rights and Irrigation.

CERTIFICATE OF APPROVAL.

To William C. Hazzard:

This is to certify that, upon the showing heretofore made and filed in the office of the State Engineer of Idaho to the effect that you are prevented from proceeding under the terms and conditions set forth in your above numbered permit because of the pendency of a matter within the jurisdiction of the District Court of the Fourth Judicial District of the State of Idaho, in and for Gooding County, for the cancellation of the said permit, and over which you have no control, you are hereby relieved from proceeding further under said terms and conditions until such time as the disability hereinbefore mentioned shall have been removed, or until you shall have been notified by this office of the revocation of this certificate.

This certificate will operate to extend the time or times for compliance with the terms and conditions of your permit as originally issued a period of time equal to the period elapsing from the date of this certificate to the date of the removal of the disability hereinbefore mentioned, or until you shall have been notified of the revocation of this certificate: Provided: That you notify this office of the removal of said disability within thirty days after it is removed, and, unless such notice is given, no rights will be acquired under this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office at Boise, Idaho, this 31st day of March, 1919.

W. G. Swendsen
State Engineer.

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BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO.

MARY E. SYSTER,
Contestant,

vs.

WILLIAM C. HAZZARD, et al,
Contestee.

JUDGMENT AND DECREE.

The evidence in the above entitled proceeding, consisting of the affidavits and exhibits of the respective parties hereto, having been read and duly considered, and the State Engineer having made his personal inspection of the works of diversion, constructed and erected under said Permit No.10415 and being fully advised in the premises, finds:

1. That the works of diversion constructed under said Permit are in accordance with the terms of said Permit and are sufficient for the purposes intended and well designed to perform the work of the developing of the power mentioned therein and are sufficient in extent and cost of construction to comply with the terms of said Permit and have been constructed within the time allotted within said Permit and the extensions granted by this office.

2. That said Permit was not procured by fraud.

3. That the Contestee succeeded to all the rights of the said Clear Lake Power and Improvement Company in and to the works and property of the last named Company and had the right to apply such works in fulfillment of the terms of said Permit.

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Rec'd Jan 4-'19

WHEREFORE: It is hereby ordered, adjudged and decreed that the petition of said Mary E. Syster, Contestant, for the cancellation of said Permit 10415 is hereby denied.

IT IS FURTHER ORDERED that the extension of time heretofore granted the Contestees for the completion of works because of the litigation involved in the case of the Clear Lake Power and Improvement Company, a Corporation, Plaintiff, vs. John Criswell, Minnie Criswell, James Criswell, Mrs. James Criswell, I. F. Constant and Florence Constant, Defendants, in the District Court of the Fourth Judicial District of the State of Idaho in and for Gooding County, is hereby continued until the final termination of said suit by retrial of the issues in said District Court under an opinion and remittitur of the Supreme Court of the State of Idaho.

IT IS FURTHER ORDERED that the time for the completion of said works is hereby extended in accordance with the application therefor filed by the Contestees in the office of the State Engineer of the State of Idaho on the 26th day of May, 1918, from the time of the filing of the Contest Petition by the Contestant in this proceeding, to-wit: the 18th day of December, 1917, up to and during the time for appeal from this decision and decree and if appeal is taken such extension is continued during the period of such litigation and until the same is finally terminated.

Dated this 4th day of January, A.D.1919.

Fred A. Wilcox

STATE ENGINEER OF THE STATE OF IDAHO.

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BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO.

MARY E. SYSTER, Contestant, vs. WILLIAM C. HAZZARD, Contestee, and MUTUAL LIGHT, HEAT AND POWER COMPANY, a Corporation, E. J. FINCH, Trustee, and LOUISE HAZZARD, wife of William C. Hazzard, Intervenors.	NOTICE.

To Mary E. Syster, William C. Hazzard, Mutual Light Heat and Power Company, a Corporation, E. J. Finch, Trustee, and Louise Hazzard, the above named parties:

YOU ARE EACH HEREBY NOTIFIED that the undersigned, the State Engineer of the State of Idaho, has this day entered a decision or decree in the above entitled cause or proceeding in favor of the Contestee and against the Contestant and denying the petition of the Contestant to cancel Permit No.10415 and

YOU ARE HEREBY FURTHER NOTIFIED that any party aggrieved by said decision or decree shall have ninety days from the date of this notice in which to commence action or appeal from such decision or decree in the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Gooding in the manner provided by House Bill No.223, as shown by the Session Laws of 1909, pages 299 to 304 inclusive.

Dated this 4th day of January, 1919.

Fred A Welker

State Engineer of the State of Idaho.

Rec'd Jan 4-'19

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January 4, 1919.

Messrs. Hawley & Hawley, Attys.,
Boise, Idaho.

Gentlemen:

I hand you herewith notice of filing of my decision in the case of Mary E. Syster, contestant, versus Wm. C. Hazzard, et al, contestee, in the petition for cancellation of Permits No. 7056 and 10415.

Very truly yours,

PAW/MB

State Engineer.

File: 7056
10415

10415

January 4, 1919.

Mr. Geo. Harriett,
Twin Falls, Idaho.

Dear Sir:

I hand you herewith notice of filing of my decision in the case of Mary E. Syster, contestant, versus Wm. O. Hazzard, et al, contestees, in the petition for cancellation of Permits No. 7056 and 10415.

Very truly yours,

PAW/MB
Encl.
File: 7056
10415

State Engineer.

10415

January 4, 1919.

Mr. Jas. R. Bothwell, Atty.,
Twin Falls, Idaho.

Dear Sir:

I hand you herewith notice of filing of my decision in the case of Mary M. Syster, contestant, versus Wm. C. Hazzard, et al, contestee, in the petition for cancellation of Permits Nos. 7056 and 10415.

Very truly yours,

FAW/MB

State Engineer.

File: 7056
10415

10415

December 9, 1918.

Re: Permits 7056 & 10415.

Mr. Jas. R. Bothwell,
First National Bank Building,
Twin Falls, Idaho.

Dear Sir:

I have yours of the 6th and will attend to the matter of extension of time at the same time the decision is recorded. I am sorry to say that I have not yet had time to prepare the decision as I have been called away from the office continually.

I am glad you have called my attention to this matter as I had not thought of the application for extension since arriving at a conclusion in the contest.

Very truly yours,

PAW/MB

State Engineer.

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JAMES R. BOTHWELL W. ORR CHAPMAN

Law Offices

FIRST NATIONAL BANK BUILDING

TWIN FALLS, IDAHO

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OFFICE OF STATE ENGINEER

December 6, 1918

Honorable Fred A. Wilkie,
State Engineer,
Boise, Idaho.

Dear Sir,

In re Water Right Permits No.7056 and 10415, standing in the name of William C. Hazzard: On May 25th last I enclosed to you, on behalf of William C. Hazzard and wife and the Mutual Light Heat & Power Company, two affidavits asking for an extension of time for the completion of the works under said permits, as provided by Section 3245 R.C.I. and Chapter 135 Laws of 1915. The affidavits requested that the time for completion of works be extended to equal the time during which these permits should be the subject of litigation in the contests filed by Mary E. Syster.

In your letter of May 31st last you acknowledged receipt of the affidavits and say "that in view of the fact that a contest is now pending against these permits, no action can be taken on the applications for extension. The rights will stand just as they are until the decision has been made after the hearing. The applications will be placed on file and will be taken up at that time."

Since receiving your letter of November 29th, in which you state that you have determined the contest in favor of the contestee, it has occurred to Mr. Hazzard and the Mutual Light Heat and Power Company that an extension of the time within which to complete the works under both of these permits should be made by you at the time your decision is filed, granting until the time of appeal has expired, and, in case an appeal is taken, then until the litigation is finally disposed of, within which to complete the works under said permits.

The parties interested are specially anxious to have this extension and order made by you prior to a change in the administration, since another Engineer would not be familiar with the facts and the parties in interest might lose valuable rights by reason of that fact.

Very truly yours,

JRB-E

Permits 7056 10415

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BEFORE THE STATE ENGINEER

OF THE STATE OF IDAHO.

Mary E. Syster, Contestant, -vs- William C. Hazzard, Contestee.	AFFIDAVITS OF CONTEST NO. 10145.

CAPTAIN R. T. HAZZARD

MARY SYSTER

OTIS SYSTER

FRANK CARHART

H. L. Senger.

10 June - '18

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BEFORE THE STATE ENGINEER OF

THE STATE OF IDAHO.

Mary E. Syster, Contestant, -vs- William C. Hazzard, Contestee.	)	AFFIDAVIT OF CAPTAIN HAZZARD IN CONNECTION WITH CONTEST OF PERMIT NO. 10145.

STATE OF IDAHO)
) ss.
County of ADA)

CAPTAIN R. T. Hazzard, being first duly sworn, deposes and says, that he is the same Captain R. T. Hazzard who has made affidavit on behalf of the contestant in the contest of permit No. 7056. That he specifically refers to the said affidavit, and by this reference makes it a part of this affidavit in the contest of said permit No. 10145.

That the said affiant had nothing whatever to do with the taking out of the said permit No. 10145, but believes from his knowledge of the natural conditions surrounding the point of diversion under said permit No. 7056, that the said permit No. 10145 was taken out with the idea of abandoning the said permit No. 7056, and attempting to transfer all work done under said permit to and for the benefit of said permit No. 10145.

That there has been absolutely no work done under either of said permits, or in connection with the development of any power for utilizing the flow of Clear Lake and its feeder and outlet stream, Clear Creek, excepting as this work was done prior to the first of January, 1915, and that no additional work has been done, which can in any way be counted as improvement under permit No. 10145, and that affiant believes, and therefore states, that one fifth of all work [redacted] to be done prior to the 8th day of January, 1917, has not been done or completed, and that said permit is subject to concellation because of said failure to complete said work.

P. J. Haggard

Subscribed and sworn to before me this 10th day of June, 1918.

Notary Public for the State of Idaho: Residence, Boise, Idaho.

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BEFORE THE STATE ENGINEER OF THE

STATE OF IDAHO.

MARY E. SYSTER,
Contestant,

vs.

WILLIAM C. HAZZARD,
Contestee.

AFFIDAVIT.

In the Matter of the Contest
of Permit No. 10415.

STATE OF IDAHO,)
) SS.
County of Ada.)

Mary E. Syster, being first duly sworn deposes and says, that she is the holder of permits Nos. 13362 and 13363, issued by the State Engineer of the State of Idaho. That said permits at no time have been transferred by her to the Idaho Power Company or any other person, company or corporation, and that she still holds the same.

That she hereby refers to the affidavit in support of contest petition contesting permit No. 7056 and by this reference specifically makes her supporting affidavit therein a part of her affidavit in support of the contest of permit No. 10415, and repeats and reiterates the statements made in said affidavit. That there has been no independent work of any kind or character performed upon the ground in connection with permit No. 10415, nor has there been any work of any kind or character additional to that which has heretofore been performed in connection with Permit No. 7056. That at no time since about the 10th day of November, 1914, has there been any work of

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any kind or character or materials furnished upon the ground, or observeable to the senses, in connection with the development of either said permit No. 7056 or No. 10415. That affiant well knows this to be a fact because of her residence at all times since said time upon and adjacent to the lands which is the site of operations to be carried on for the development of either of said permits.

Further affiant saith not. Mary E Lyster

Subscribed and sworn to before me this 8 day of June, 1918.

Lisenmack
Notary Public for Idaho.
Residence: Boise, Idaho.

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BEFORE THE STATE ENGINEER OF THE

STATE OF IDAHO.

MARY E. SYSTER,)
)
Contestant,)
)
vs.) AFFIDAVIT.
)
WILLIAM C. HAZZARD,)
)
Contestee.)

STATE OF IDAHO,)
) SS.
County of Ada.)

In the Matter of the Contest
of Permit Number 10415.

Comes now Otis Syster, being first duly sworn and ddeposes and says:

That he is the husband of Mary E.Syster, the contestant in the above entitled petition and matter. That he has carefully read the contents of the affidavit both of contest and in support of the contest made and filed by the contestant. That he, of his own personal knowledge, knows the facts therein stated to be true and correct and verifies the same and corroborates each and every statement therein made.

Further deponent saith not.

Otis Syster

Subscribed and sworn to
before me this 8 day of June, 1918.

Notary Public for Idaho.
Residence: Boise, Idaho.

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BEFORE THE STATE ENGINEER OF

THE STATE OF IDAHO.

Mary E. Syster, Contestant, -vs- William C. Hazzard, Contestee	AFFIDAVIT IN CONNECTION WITH PERMIT NO. 10145.

STATE OF IDAHO)
) SS.
County of Ada)

Frank Carhart, being first duly sworn, deposes and says: that he is the same Frank Carhart who has heretofore made affidavit in connection with the contest of Permit No. 7056. That he hereby refers to said affidavit, and by this reference makes it a part of this affidavit.

That in affiant's opinion one-fifth of the work of diversion has not yet been done under said permit No. 10145.

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Frank Parker

Subscribed and sworn to before me this 10th day of June, 1918.

Rasmack

Notary Public for Idaho.
Residence: Boise, Idaho.

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BEFORE THE STATE ENGINEER OF

THE STATE OF IDAHO.

Mary E. Syster, Contestant, -vs- William C. Hazzard, Contestee.	AFFIDAVIT IN CONNECTION WITH PERMIT NO. 10145.

STATE OF IDAHO)
) SS.
County of ADA)

H. L. SENGER, being first duly sworn, deposes and says, that he is the same H. L. Senger who made affidavit in support of contest No. 7056. That he desires to reiterate all that he said in said affidavit and make it a part of this affidavit in the contest of permit No. 10145.

That one-fifth of the work of diversion, either in amount of money necessary or amount of money spent in work and materials, has not yet been done under the said permit No. 10145.

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N. L. Sengre

Subscribed and sworn to before me this 10th day of June, 1918.

Thaswmack

Notary Public for Idaho
Residence: Boise, Idaho.

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BEFORE THE STATE ENGINEER OF

THE STATE OF IDAHO.

Mary E. Syster,
Contestant,
-vs-
William C. Hazzard,
Contestee.

IN THE MATTER OF CONTEST OF
PERMIT NO. 10145.

Service is hereby acknowledged in the above entitled contest matter of affidavits of Captain R. T. Hazzard, Mary Syster, Otis Syster, Frank Carhart, and H. L. Senger.

Attorneys for Contestee.

Dated at Boise, Idaho, June 10, 1918.

10415

BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO.

- - - - - - - - - -

MARY E. SYSTER,
Contestant.
-vs-
WILLIAM C. HAZZARD,
Contestee.

ORDER PERMITTING INTERVENTION.

- - - - - - - - -

Upon reading, and filing the Affidavit of E. J. FINCH, Trustee, it is hereby ordered that the said trustee be and he hereby is permitted to intervene in the above entitled proceeding by uniting with the defendant and resisting the claims of the contestant herein.

Dated this 10 day of June, A. D., 1918.

Fred A Wells

STATE ENGINEER.

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BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO.

- - - - - - -

MARY E. SYSTER,
Contestant.

-vs-

WILLIAM C. HAZZARD,
Contestee.

A F F I D A V I T.

- - - - - - - -

STATE OF IDAHO)
) ss.
COUNTY OF TWIN FALLS)

E. J. FINCH being first duly sworn deposes and says that he is the Trustee referred to in that certain Trust Agreement made and entered into on April 18, A. D., 1918, by and between WILLIAM C. HAZZARD and LOUISE HAZZARD, Husband and Wife, and The MUTUAL LIGHT, HEAT and POWER COMPANY, a corporation, and the Trustee designated in that certain trust deed, dated May 24, A.D., 1918, heretofore filed and recorded in the office of the State Engineer of the State of Idaho, wherein and whereby Water Right Permit No. 10415, together with other property, was conveyed to this affiant as Trustee for the said WILLIAM C. HAZZARD and LOUISE HAZZARD and THE MUTUAL LIGHT, HEAT & POWER COMPANY, a corporation.

That as said trustee, he has an interest in the matter in controversy in the above entitled Contest proceedings, and is interested in the success of the Contestee in said cause, and is interested in resisting the claims of the said contestant

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in said proceeding, wherefore the said affiant herein prays that an Order be made by the Hon. State Engineer of the State of Idaho, directing that this affiant as trustee, as aforesaid, be permitted to intervene in this proceeding, and be permitted to unite with the contestee WILLIAM C. HAZZARD, in resisting the claims of the contestant herein.

E. P. Finch

Subscribed and sworn to before me this 1st day of June A. D., 1918.

Notary Public.

A F F I D A V I T .

STATE OF IDAHO, :
: ss.
COUNTY OF TWIN FALLS :

WILLIAM C. HAZZARD being first duly sworn deposes and says:

That he and his wife, Louise Hazzard, are the owners of permit No.10415, with certain legal title vested in E. J. FINCH, as Trustee, and THE MUTUAL LIGHT HEAT AND POWER COMPANY, for the diversion and use of the waters from Clear Lakes and its feeders for power purposes, and power, domestic and irrigation purposes, which said permit was granted by the State Engineer of the State of Idaho, and approved on July 8, 1914, and the said William C. Hazzard makes this affidavit on behalf of himself and the interveners named in a certain contest petition hereinafter mentioned.

That on or about the 26th day of October, 1917, one, Mary E. Syster, made application to the State Engineer for two certain permits to divert and use the waters mentioned and described in permit No.10415, which said applications were thereafter approved by the State Engineer as permits Nos. 15562 and 15563. That said Mary E. Syster acting under said permits Nos. 15562 and 15563, on or about December 18, 1917, filed contest petition in the State Engineer's office in the State of Idaho, against said permit No. 10415, for the purpose of cancelling the same. That thereafter, the said Mary E. Syster, on or about the 26th day of February, 1918, withdrew said contest petition, and on or about the 26th day of February, 1918, filed a contest petition against permit No.10415; that the latter petition is now in force and the issues raised thereby, are now in process of litigation before the

said State Engineer for the purpose of cancelling the said permit No.10415. The said petitions, at all times since the filing thereof, have interfered with and are interfering with the construction of the works of diversion specified in said permit No.10415, and the owners of said permit cannot safely proceed with the construction of said works because of the fact that the waters and water rights and property rights set forth and mentioned in said permit No.10415, are involved in said contest and litigation.

That by reason of the foregoing facts and interferences the said William C. Hazzard and wife, and the said E. J. Finch, as Trustee, and The Mutual Light Heat and Power Company, pray that the State Engineer of the State of Idaho, grant to them, the owners of said permit No.10415, an extension of time for the completion of said works for the length of time which said interferences have existed and will exist, as provided by Section 3245 of the Revised Codes of Idaho, as amended by Chapter 155, of the Laws of 1915.

William C. Hazzard

Subscribed and sworn to before me this 24th day of May 1918.

Roy Chapman
Notary Public.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF IDAHO.

In the Matter of the Petition of Mary E. Syster for Cancellation of Permit No. 10415.

NOTICE OF HEARING.

The State Engineer of the State of Idaho sends Greetings:

To Mary E. Syster and William C. Hazzard.

You, and each of you are hereby notified that Mary E. Syster did, on the 26th day of February, 1918, file in my office, at Boise, Idaho, a petition praying for the cancellation of Permit No. 10415, and alleged grounds for such cancellation, and that the owner and holder of said Permit is William C. Hazzard; and that a hearing will be had upon said petition, at Boise, Idaho, at the office of the State Engineer, on Monday, the 10th day of June, 1918, at 10 o'clock, A. M., before me or my authorized representative.

At such hearing, you, William C. Hazzard, will be required to file affidavits showing why said Permit should not be cancelled as prayed for in the petition for cancellation; and you, Mary E. Syster, may file affidavits setting forth such facts as you desire, but are not required to do so.

After said date, to-wit: the 10th day of June, 1918, and after such hearing, this office will decide what further evidence is desired in accordance with House Bill 223, page 299, Session Laws of 1909, and amendments thereto.

Witness my hand and the seal of my office, at Boise, Idaho, this 21st day of March, 1918.

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Fred A Wiehe

State Engineer.

March 21, 1918.

Re Permit No. 10415.

Mr. William C. Hazzard,
R. F. D. No. 4,
Buhl, Idaho.

Dear Sir:--

Am sending you herewith, by registered mail, notice of hearing in the matter of the petition of Mary E. Syster, for cancellation of Permit No. 10415.

Very tr ly yours,

FRED A. WILKIE,

State Engineer.

1Enc.

By_____

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March 21, 1918.

Re Permit No. 10415.

Mrs. Mary E. Syster.
Buhl, Idaho.

Dear Madam:—

Am herewith sending you, by registered mail, notice of hearing in the matter of the petition for cancellation of Permit No. 20545.

Very truly yours,

FRED A. WILKIE,

State Engineer.

1 Enc.

By_____

10415

February 27, 1918.

Re: Permit 10415.

Mr. Wm. C. Hazard,
R. D. #4, Buhl, Idaho.

Dear Sir:

This letter is to notify you that on February 25, 1918, Mary E. Syster filed a dismissal of her action against your permits Nos. 10415 and 7056, the same being dismissed without protest, and on February 26, 1918, filed a new contest against the same permits.

This will call for a re-setting of the date of hearing, of which you will be given due notice. The hearing set for the 9th day of March is now dismissed.

Very truly yours,

J. H. SMITH,

State Engineer.

By

Deputy.

FWS/MB

10415

10415

IN THE OFFICE OF THE STATE ENGINEER

OF THE

STATE OF IDAHO.

In the Matter of the Petition of)
:
Mary E. Syster for Cancellation of :
:
Permit Number 10415.)

The State Engineer of the State of Idaho sends Greeting:

To Mary E. Syster, and William C. Hazzard.

You, and each of you are hereby notified that Mary E. Syster, did, on the 18th day of December, 1917, file in my office, at Boise, Idaho, a petition praying for the cancellation of Permit Number 10415, and alleged grounds for such cancellation, and that the owner and holder of said Permit is William C. Hazzard; and that a hearing will be had upon said petition, at Boise, Idaho, at the office of the State Engineer, on Saturday, the 9th day of March, 1918, at 10 o'clock A. M., before me or my authorized representative.

At such hearing, you, William C. Hazzard, will be required to file affidavits showing why said Permit should not be cancelled as prayed for in the petition for cancellation; and you, Mary E. Syster may file affidavits setting forth such facts as you desire, but are not required to do so.

After said date, to-wit: the 9th day of March, 1918, and after such hearing, this office will decide what further evidence is desired in accordance with House Bill 223, page 299, Session Laws of 1909, and amendments thereto.

Witness my hand and the seal of my office, at Boise, Idaho, this 7th day of January, 1918.

State Engineer.

10415

BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO.

MARY E. SYSTER, Contestant. vs. WILLIAM C. HAZZARD, Contestee.	Contest Petition.

TO THE HONORABLE STATE ENGINEER OF THE STATE OF IDAHO:

COMES NOW, Mary E. Syster, contestant above named, and hereby enters contest against, and petitions for the cancellation of, Permit No. 10415, and for cause of such cancellation and contest alleges and states as follows, to-wit:

I

That Mary E. Syster, contestant above named, did, on the 26th day of October, 1917, file in the office of the State Engineer of the State of Idaho her application for Permit to appropriate 750 cubic feet per second of the waters arising from certain unnamed springs situated in Lot 5 and the SW¼ of the NW¼ of Section 2, Township 9 South, Range 14 East, B. M., which waters now feed into Clear Lake and are tributary to Snake River, Idaho, and which application was numbered by the State Engineer 16955, and thereafter, on January 2, 1918, approved by him as Permit No. 13862.

II

That all and every of the matters and things required by the laws of the State of Idaho and the regulations of the State Engineer of said state to be done and performed by said contestant, Mary E. Syster, in connection with said Permit No. 13862 have been done and performed by her, and said Permit No. 13862 at all times has been, and now is, in full force and effect and in good standing.

III

That Mary E. Syster, contestant above named, did, on the 27th day

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10415

of October, 1917, file in the office of the State Engineer of the State of Idaho her application for permit to appropriate 750 cubic feet per second of the waters arising from certain unnamed springs in Lot 5 and the SW¼ of the NW¼ of Section 2, Township 9 South, Range 14 East, B.M., which feed into Clear Lake and are tributary to Snake River, Idaho, and which application was numbered by the State Engineer 18956, and thereafter, on January 2, 1918, approved by him as Permit No. 13565.

IV

That all and every of the matters and things required by the laws of the State of Idaho and the regulations of the State Engineer of said state to be done and performed by said contestant, Mary E. Syster, in connection with said Permit No. 13565 have been done and performed by her, and said Permit No. 13565 at all times has been, and now is, in full force and effect and in good standing.

V

That on June 29, 1914, William C. Hazzard, contestee herein, made application to the State Engineer of the State of Idaho for permit to appropriate 1000 cubic feet per second of the waters arising from the unnamed springs heretofore described as situated in Lot 5 and the SW¼ of the NW¼ of Section 2, Township 9 South, Range 14 East, B.M., which waters now feed into Clear Lake, are tributary to Snake River, Idaho, and are the same waters for the appropriation of which the State Engineer issued Permits Nos. 13562 and 13565 to said contestant, Mary E. Syster, as hereinbefore set forth; that said application of the said William C. Hazzard was numbered by the said State Engineer as 15899 and thereafter approved by him on the 8th day of July, 1914 as Permit No. 10415; and that said William C. Hazzard, contestee above named, now is the record holder and owner of said Permit No. 10415.

VI

That said Permit No. 10415, by its terms, requires the holder thereof to entirely complete the diversion work therein specified on or before the 8th

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day of July, 1919, and provided that one-fifth of such work be completed within one-half of the time allowed for such entire completion, to-wit, on or before the 8th day of January, 1917; that the diversion works to be constructed under said Permit are described therein as a dam, canal and pipe line; that the dam was to be constructed of broken stone, earth and concrete, and was to be 12 feet high, 100 feet long at the top, and 75 feet at the bottom; that the head gate was to be 12 feet wide and 14 feet high; that the ditch or canal was to be concreted, 21½ feet wide at the bottom, 25 feet wide at the water line and 13 feet deep, and together with a pipe line 90 inches in diameter, having a grade of 165.6 feet, was to be .25125 miles in length and situated in Lot 7, Section 2, Township 9 South, Range 14 East, B. M.; all of which is more fully set forth in said Permit No. 10415 now of record in the office of the State Engineer of the State of Idaho, to which record reference is hereby made.

VII

That one-fifth of the construction work hereinbefore described as provided by and specified in said Permit No. 10415 to be completed on or before January 8, 1917, has not been done, performed or completed either on said date, or at all, and the holder of said permit had not at said time, to-wit, on January 8, 1917, complied with the terms and conditions of said permit requiring one-fifth of the diversion work as therein specified to be completed on or before said 8th day of January, 1917; that whatever work is now located upon the site where diversion work under said Permit No. 10415 was to have been constructed as provided by and specified in said permit, was done and performed by the Clear Lake Power & Improvement Company during the years 1912 to 1914, and the holder of said Permit No. 10415 acquired no interest whatever, if at all, in such work until September 15, 1917 and after the time for the completion of one-fifth of said diversion work as provided by said Permit No. 10415 had expired as therein specified, and that in no event, did said diversion work as now located upon said site at any time, nor does it now, amount to one-fifth of the diversion work as provided by and specified in said Permit No. 10415, and neither on said 8th day of January, 1917, nor at any other time, nor at all, was one-fifth of

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the diversion work as specified in said Permit No. 10415 constructed, done or completed.

WHEREFORE, the said Mary E. Syster, contestant, prays that this petition may be filed, that due notice thereof may be given, a hearing and such further proceedings be had as provided and required by law, and that said Permit No. 10415 be cancelled, annulled and made of no force and effect.

Mary E Syster

By Hawley & Hawley &

J. L. Eberle

Attorneys.

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

J. L. EBERLE, being first duly sworn, on oath deposes and says: that he is one of the attorneys for Mary E. Syster, contestant above named; that he makes this verification on behalf of said contestant as her attorney for the reason that she does not reside in, and is absent from, the County of Ada where the affiant resides; that he has read the above and foregoing petition, knows the contents thereof, and that the same is true except as to the matters therein stated to be upon information and belief, and as to these matters he believes them to be true.

J. L. Eberle

Subscribed and sworn to before me this 26th day of February, 1910.

E. C. Kinsted

Notary Public
Residing at Boise, Idaho.

(NOTARIAL SEAL)

10415

BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO

MARY R. SYSTER,
Contestant,
vs.
WILLIAM C. HAZZARD,
Contestee.

ORDER

The motion of Mary R. Syster, Contestant above named, filed herein, on February 25, 1918, that her contest against and petition for cancellation of Permit No. 10415 be dismissed without prejudice, having come on regularly to be heard before the State Engineer of the State of Idaho, and the State Engineer being fully advised in the premises, and for good cause shown;

NOW, THEREFORE, it is hereby ordered that the contest of the said Mary R. Syster against and her petition for the cancellation of said Permit No. 10415 be, and hereby is, dismissed without prejudice, however, to the rights of the said Mary R. Syster, Contestant herein, to commence contest against, petition for the cancellation of, or otherwise prosecute cancellation proceedings against, said Permit No. 10415 at any time.

Dated at Boise, Idaho, February 25, 1918.

J. H. Smith
State Engineer.
By Fred A. Wilkie
Deputy.

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BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO

MARY E. SYNTER,
Contestant,
vs.
WILLIAM G. HAZZARD,
Contestee.

MOTION

TO THE HONORABLE STATE ENGINEER OF THE STATE OF IDAHO:

Comes now Mary E. Synter, Contestant above named, having heretofore entered contest against and petitioned for the cancellation of Permit No. 10415, and moves the Honorable State Engineer that said contest, petition and cancellation proceedings be dismissed without prejudice, however, to the rights of the said Mary E. Synter, Contestant herein, to commence contest against, petition for the cancellation of, or otherwise prosecute cancellation proceedings against, said Permit No. 10415 at any time.

Mary E Synter
By Hawley & Hawley
J. E. Ebey
Attorneys.

10415

Read 25 Feb - '18

January 7th, 1918.

Re Permit 10415.

Mrs. Mary E. Syster,
Buhl, Idaho.

Dear Madam:--

Am herewith sending you, by registered mail, notice of hearing in matter of the petition for cancellation of Permit No. 10415.

Very truly yours,

J. H. SMITH,

State Engineer.

lenc.

By_____

10415

IN THE OFFICE OF THE STATE ENGINEER

OF THE

STATE OF IDAHO.

In the Matter of the Petition of)
:
Mary E. Syster for Cancellation of :
:
Permit Number 10415.)

The State Engineer of the State of Idaho sends Greeting:

To Mary E. Syster, and William C. Hazzard.

You, and each of you are hereby notified that Mary E. Syster, did, on the 18th day of December, 1917, file in my office, at Boise, Idaho, a petition praying for the cancellation of Permit Number 10415, and alleged grounds for such cancellation, and that the owner and holder of said Permit is William C. Hazzard; and that a hearing will be had upon said petition, at Boise, Idaho, at the office of the State Engineer, on Saturday, the 9th day of March, 1918, at 10 o'clock A. M., before me or my authorized representative.

At such hearing, you, William C. Hazzard, will be required to file affidavits showing why said Permit should not be cancelled as prayed for in the petition for cancellation; and you, Mary E. Syster may file affidavits setting forth such facts as you desire, but are not required to do so.

After said date, to-wit: the 9th day of March, 1918, and after such hearing, this office will decide what further evidence is desired in accordance with House Bill 223, page 299, Session Laws of 1909, and amendments thereto.

Witness my hand and the seal of my office, at Boise, Idaho, this 7th day of January, 1918.

State Engineer.

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January 7th, 1916.

Re Permit 10415.

Mr. William C. Hazzard,
R. F. D. No. 4,
Buhl, Idaho.

Dear Sir:—

Am herewith sending you, by registered mail, notice of hearing in the matter of the petition of Mary E. Syster, for cancellation of Permit 10415.

Very truly yours,

J. H. SMITH,

State Engineer.

1Enc.

By_____

10415

BEFORE THE STATE ENGINEER OF THE STATE OF IDAHO

RECEIVED
DEC 18 1917
OFFICE OF STATE ENGINEER

MARY E. SYSTER, Contestant.	
vs.	Contest Petition.
WILLIAM C. HAZZARD, Contestee.	

TO THE HONORABLE STATE ENGINEER OF THE STATE OF IDAHO:

COMES NOW, Mary E. Syster, contestant above named, and hereby enters contest against, and petitions for the cancellation of, Permit No. 10415, and for cause of such cancellation and contest alleges and states as follows, to-wit:

I

That Mary E. Syster, contestant above named, did, on the 26th day of October, 1917, file in the office of the State Engineer of the State of Idaho her application for Permit to appropriate 750 cubic feet per second of the waters arising from certain unnamed springs situated in Lot 5 and the SW¼ of the NW¼ of Section 2, Township 9 South, Range 14 East, B. M., which waters now feed into Clear Lake and are tributary to Snake River, Idaho, and which application was numbered by the State Engineer 18953, and thereafter, on December 14, 1917, approved by him as Permit No.

II

That all and every of the matters and things required by the laws of the State of Idaho and the regulations of the State Engineer of said state to be done and performed by said contestant, Mary E. Syster, in connection with said Permit have been done and performed by her, and said Permit at all times has been, and now is, in full force and effect and in good standing.

III

That Mary E. Syster, contestant above named, did, on the 27th day

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of October, 1917, file in the office of the State Engineer of the State of Idaho her application for permit to appropriate 750 cubic feet per second of the waters arising from certain unnamed springs in Lot 5 and the SW¼ of the NE¼ of Section 2, Township 9 South, Range 14 East, B.M., which feed into Clear Lake and are tributary to Snake River, Idaho, and which application was numbered by the State Engineer 18956, and thereafter, on December 14, 1917, approved by him as Permit No.

IV

That all and every of the matters and things required by the laws of the State of Idaho and the regulations of the State Engineer of said state to be done and performed by said contestant, Mary E. Syster, in connection with said Permit have been done and perfomed by her, and said Permit at all times has been, and now is, in full force and effect and in good standing.

V

That on June 29, 1914, William C. Hazzard, contestee herein, made application to the State Engineer of the State of Idaho for permit to appropriate 1000 cubic feet per second of the waters arising from the unnamed springs heretofore described as situated in Lot 5 and the SW¼ of the NE¼ of Section 2, Township 9 South, Range 14 East, B.M., which waters now feed into Clear Lake, are tributary to Snake River, Idaho, and are the same waters for the appropriation of which the State Engineer issued Permits Nos. and to said contestant, Mary E. Syster, as hereinbefore set forth; that said application of the said William C. Hazzard was numbered by the said State Engineer as 15399 and thereafter approved by him on the 8th day of July, 1914 as Permit No. 10415; and that said William C. Hazzard, contestee above named, now is the record holder and owner of said Permit No. 10415.

VI

That said Permit No. 10415, by its terms, requires the holder thereof to entirely complete the diversion work therein specified on or before the 8th

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day of July, 1919, and provided that one-fifth of such work be completed within one-half of the time allowed for such entire completion, to-wit, on or before the 8th day of January, 1917; that the diversion works to be constructed under said Permit are described therein as a dam, canal and pipe line; that the dam was to be constructed of broken stone, earth and concrete, and was to be 12 feet high, 100 feet long at the top, and 75 feet at the bottom; that the head gate was to be 12 feet wide and 14 feet high; that the ditch or canal was to be concreted, 21½ feet wide at the bottom, 25 feet wide at the water line and 13 feet deep, and together with a pipe line 90 inches in diameter, having a grade of 163.6 feet, was to be .23125 miles in length and situated in Lot 7, Section 2, Township 9 South, Range 14 East, B. M.; all of which is more fully set forth in said Permit No. 10415 now of record in the office of the State Engineer of the State of Idaho, to which record reference is hereby made.

VII

That one-fifth of the construction work hereinbefore described as provided by and specified in said Permit No. 10415 to be completed on or before January 8, 1917, has not been done, performed or completed either on said date, or at all, and the holder of said permit had not at said time, to-wit, on January 8, 1917, complied with the terms and conditions of said permit requiring one-fifth of the diversion work as therein specified to be completed on or before said 8th day of January, 1917; that whatever work is now located upon the site where diversion work under said Permit No. 10415 was to have been constructed as provided by and specified in said permit, was done and performed by the Clear Lake Power & Improvement Company during the years 1912 to 1914, and the holder of said Permit No. 10415 acquired no interest whatever, if at all, in such work until September 15, 1917 and after the time for the completion of one-fifth of said diversion work as provided by said Permit No. 10415 had expired as therein specified, and that in no event, did said diversion work as now located upon said site at any time, nor does it now, amount to one-fifth of the diversion work as provided by and specified in said Permit No. 10415, and neither on said 8th day of January, 1917, nor at any other time, nor at all, was one-fifth of

the diversion work as specified in said Permit No. 10415 constructed, done or completed.

WHEREFORE, the said Mary E. Syster, contestant, prays that this petition may be filed, that due notice thereof may be given, a hearing and such further proceedings be had as provided and required by law, and that said Permit No. 10415 be cancelled, annulled and made of no force and effect.

Mary E. Syster

By Hawley & Hawley

J. L. Eberle

Attorneys.

STATE OF IDAHO)
(ss.
COUNTY OF ADA)

J. L. EBERLE, being first duly sworn, on oath deposes and says: that he is one of the attorneys for Mary E. Syster, contestant above named; that he makes this verification on behalf of said contestant as her attorney for the reason that she does not reside in, and is absent from, the County of Ada where the affiant resides; that he has read the above and foregoing petition, knows the contents thereof, and that the same is true except as to the matters therein stated to be upon information and belief, and as to those matters he believes them to be true.

J. L. Eberle

Subscribed and sworn to before me this 18th day of December, 1917.

(NOTARIAL SEAL)

Notary Public
Residing at Boise, Idaho.

A_F_F_I_D_A_V_I_T .

STATE OF IDAHO,)
) ss.
COUNTY OF TWIN FALLS.)

WILLIAM C. HAZZARD, being first duly sworn, deposes and says:

That he is the owner and holder of water permits Numbers 7056 and 10,415, for the diversion and use of water from Clear Lakes, and its feeders, for power purposes, and power, domestic and irrigation purposes, which said permits were granted by the State Engineer of the State of Idaho, on the 28th day of January, 1911, and the 8th day of July, 1914, respectively. That Permit #10,415 was issued directly to the said affiant, William C. Hazzard, and that permit #7056 was issued originally to George L. Buck of 378 Wabash Avenue, Chicago, Illinois, and thereafter, and on the 10th day of November, 1911, assigned by the said Buck and his wife to the Clear Lakes Orchard Company, an Idaho corporation, and thereafter and on the 1st day of March, 1913, said permit was assigned by the said Clear Lakes Orchard Company to William C. Hazzard, this affiant, and Norman J. Kepmeier of Milwaukee, Wisconsin, and thereafter, and on the 17th day of March, 1913, said permit was assigned in writing by the said William C. Hazzard, this affiant, and Norman J. Kepmeier to the Clear Lake Power & Improvement Company, a corporation under the laws of Idaho.

That thereafter, a suit was brought in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Gooding, by this affiant, William C. Hazzard, as plaintiff, and against the Clear Lake Power and Improvement Company, the corporation aforesaid, and thereafter

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judgment was rendered in favor of said plaintiff and upon execution duly issued thereunder, the property of said corporation being realty located in Sections Two (2) and Three (3) in Township Nine (9) South, Range Fourteen (14) East of the Boise Meridian in Gooding County, Idaho, together with all the water and water rights owned, held and claimed by the said Clear Lake Power and Improvement Company under permits No. 7056, was duly and regularly sold at Sheriff's Sale by the Sheriff of said Gooding County to this affiant, the plaintiff in said action, for the sum of THREE THOUSAND SIXTY-TWO AND SIXTY-FIVE/100 DOLLARS ($3,062.65) on the 15th day of September, 1916, as evidenced by Sheriff's Certificate of Sale of Real Estate on Execution, recorded in the Recorder's office of said Gooding County, State of Idaho, and thereby this affiant and the plaintiff in said action, became the owner of said under and water rights, and the lands aforesaid by virtue of such Sheriff's sale, subject to the right of the said Clear Lake Power and Improvement Company to redeem the same on or before the 15th day of September, 1917.

That on June 12, 1914, the predecessor in interest of this affiant, to-wit: The Clear Lake Power and Improvement Company brought an action in the District Court of the Fourth Judicial District of the State of Idaho, in and for Gooding County, Against John Chriswell, et al., to clear title and remove a cloud from the title to Lot Seven (7), and the Southeast quarter (SE¼) of the Southwest quarter (SW¼) of Section Two (2), and Lot Number Two (2) of Section Eleven (11), all in Township Nine (9) South, Range Fourteen (14) East of the Boise Meridian, in said Gooding County, State of Idaho. That the lands involved in said suit and hereinbefore described are, and at all times have been, necessary

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as grounds upon which to construct the buildings, plant and machinery and works for the diversion and use of the waters mentioned and described in said premises, and that said suit was tried in the said Court and determined in favor of the defendant, from which an appeal has been taken to the Supreme Court of the State of Idaho, and is now pending therein and undecided.

That on the 5th day of March, 1915, this affiant brought an action against the said Clear Lake Power and Improvement Company in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Gooding, and thereafter a judgment was obtained against said defendant, in the sum of SIX THOUSAND AND EIGHTEEN AND no/100 DOLLARS ($6,018.00), which said judgment is now a lien upon all the real property and upon the rights of said defendant in and to permit No. 7056.

That on April 9, 1915, the Citizens State Bank of Buhl, Idaho, a corporation, brought an action against the said Clear Lake Power and Improvement Company in the District Court of the Fourth Judicial District of the State of Idaho, in and for Gooding County, and attached the property of said defendant.

That on April 29, 1915, this affiant brought suit against the Clear Lake Power and Improvement Company in the District Court of the Fourth Judicial District of the State of Idaho, in and for Gooding County, and obtained judgment therein for the sum of FOUR THOUSAND SEVEN HUNDRED AND EIGHTY DOLLARS ($4,780.)), which said judgment is a lien upon all the property of the said Power and Improvement Company, including all its rights in and to the water and water power mentioned and described in said permit #7056.

That on January 18, 1916, this affiant brought suit against the said Clear Lake Power and Improvement Company in

the District Court of the Fourth Judicial District, of the State of Idaho, in and for Gooding County, and obtained judgment therein, which is a lien on said property and is the suit heretofore mentioned herein, under which the property of said corporation was sold under Sheriff's Sale and purchased by this affiant.

That on February 26, 1916, the Citizens State Bank of Buhl, Idaho, brought suit against the said [redacted] Lake Power and Improvement Company in the District Court of the Fourth Judicial District of the State of Idaho, in and for Gooding County, in which the property of the defendant was attached and said suit is still pending in said Court.

That each and all of the foregoing suits and actions are interferring with the construction of the works of diversion specified and mentioned in the permits aforesaid, to-wit: Permits Nos. 7056 and 10,415, and the owner of said permits, this affiant, cannot safely proceed with the construction of said works, because the land involved in said suits or actions is necessary for use as sites for the buildings, machinery, plant and all works of diversion in accordance with the plans and specifications set forth in said permits, and because the rights to said permits are also involved.

That by reason of the foregoing facts and interferance this affiant prays that the State Engineer of the State of Idaho grant to this affiant the owner of Permits Nos. 7056 and 10,415 an extensionof time for the completion of said works for the length of time which said interference has existed, and will exist, as provided by Section 3254 of the Revised Codes of Idaho as amended by Chapter 133 of the Laws of 1915.

William C. Hazzard

Subscribed and sworn to before me this the 19th day of May, 1917.

George Harriott
Notary Public,
Residing at Twin Falls, Idaho.

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Boise, Idaho, July 20, 1914.

Permit 10415.

Mr. Wm. C. Hazzard,
Clear Lakes, Idaho.

Sir:--

Replying to yours of the 18th inst., would advise that approvable bond under your permit was filed in this office on July 14, 1914. Same has been duly approved and placed on file.

Very truly yours,

F. P. KING,

State Engineer.

By_____

W/C.

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WM. C. HAZZARD, President —— W. S. J. KOPMEIER, Vice President N——KOPMEIER, Secretary-Treasurer

Clear Lake Power and Improvement Company

State Engineer,
Boise,
Idaho.

Clear Lake, Idaho, July 18 1914

Dear Sir, —

Mc Reynolds & Whitson of Boise inform me that they have filed a bond in your office covering Permit No. 10415. — Will you kindly advise me if this Bond meets your approval and oblige,

Yours Very Truly,
Wm C. Hazzard

10415

RECEIVED
JUL 20 1914
OFFICE OF STATE ENGINEER

10415

Salt Lake Form 21.

Bond.

APPROVED
JUL 16 1914
State Engineer.

Know all Men by these Presents:

THAT William C. Hazzard, of Clear Lake, Idaho, as principal, and the UNITED STATES FIDELITY AND GUARANTY COMPANY, of Baltimore, Maryland, as surety, are held and firmly bound unto the State of Idaho in the full and just sum of -Two thousand- ($ 2000.00) Dollars, lawful money of the United States, to the payment of which sum, well and truly to be made, said principal binds himself, his heirs, administrators, executors and assigns, and said surety binds itself, its successors and assigns, jointly and severally, under the terms and conditions hereinafter set forth.

The terms of this obligation are such that, whereas the above named principal on the 29th day of June, 19 14, filed in the office of the State Engineer in Boise, Idaho, a certain application for permit to appropriate the public waters of the State of Idaho, the said application being thereupon numbered No. 15399, in accordance with which said application the State Engineer granted and issued to the said principal herein a certain permit numbered No. 10415, a full, true and complete copy of which application No. 15399 and permit No. 10415, is of record in the office of the State Engineer, in Book 35 of Permits, at page 10415

Now, if the above bounden principal shall faithfully carry to completion the said works of diversion as specified in said application No. 15399 and permit No. 10415, in the manner and form prescribed therein and within the time therein allowed, then the above obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, The said principal has hereunto set his hand and affixed his seal, and the said surety has caused these presents to be signed by its Attorney-in-fact, and its corporate seal to be affixed, this 14th day of July 19 14

Witnesses: William C. Hazzard [SEAL]

Jean Kendell

United States Fidelity and Guaranty Company

By W. D. McReynolds
Attorney-in-fact.

STATE OF Idaho }
COUNTY OF Ada } ss:

W. D. McReynolds being duly sworn, deposes and says: That the UNITED STATES FIDELITY AND GUARANTY COMPANY, the surety on the foregoing bond, is a corporation of the State of Maryland, duly and legally carrying on the business of a Surety Company in the State of Idaho That said Surety Company has fully complied with the laws of the State of Idaho relating to foreign corporations doing business in said State. That affiant is attorney-in-fact of said Company. That said Surety Company is authorized by its articles of incorporation and by-laws to execute the bond hereto annexed, and that said Company has assets, consisting of capital stock, paid-up cash and surplus, over and above all of its liabilities, exceeding the sum of one million, five hundred thousand dollars, and has on deposit with the Treasurer of the State of Maryland, in trust for the benefit of all bondholders, two hundred thousand dollars ($200,000) in available assets.

W. D. McReynolds

Subscribed and sworn to before me this 14th day of July, A. D. 191 4.

My commission expires Nov. 12-1916

J. E. Baines
Notary Public.

10415

Received and filed for record in the office of the State Engineer at Boise, Idaho, at

4:30 P.M. JUL 14 1914 19

E. B. King

STATE ENGINEER.